TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted].

No. [redacted] 42.

CONCEPCION VEVE Y DIAZ, JOSE SASTRAGO RELATIVE HER HUSBAND, ET AL., PLAINTIFFS IN [redacted],

vs.

JOSE AVALO SANCHEZ.

[redacted] TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

FILED APRIL [redacted], 1902.

(22,131.)

(22,131.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 523.

CONCEPCION VEVE Y DIAZ, JOSE SASTRANO BELAVAL, HER HUSBAND, ET AL., PLAINTIFFS IN ERROR,

vs.

JOSE AVALO SANCHEZ.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

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1 In the District Court of the United States for Porto Rico.

At a stated term of the District Court of the United States for Porto Rico, within and for the District aforesaid, begun and held at the court-rooms of said Court in the city of San Juan, on the second Monday of October, being the eleventh day of that month, in the year of our Lord one thousand nine hundred and nine, and of the Independence of the United States of America the one hundred and thirty-fourth—present, the Honorable Bernard S. Rodey, judge—among the proceedings had was the rendition of a judgment in the following case, to wit:

No. 480. Law.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCIÓN VEVE Y DIAZ et al.

Be it remembered that heretofore, to wit, on the seventh day of February, A. D. 1908, by leave of the Court theretofore granted, came the plaintiff by his attorney and filed his amended complaint in this cause, which said amended complaint is as follows, to wit:

Law. No. 480.

JOSÉ AVALO SANCHEZ, Plaintiff,
vs.
JOSÉ SASTRAÑO BELAVAL et al., Defendants.

Amended Complaint.

José Avalo Sanchez, a subject of the King of Spain and a
2 resident of Porto Rico, by permission of the Court first had and obtained, files this his amended complaint and complains of Concepción Veve y Diaz, José Sastraño Belaval, her husband, Josefina Porrata-Doria y Veve, Julio Ferrer Torres, her husband, Celina Porrata-Doria y Veve, Albertina Porrata Doria y Veve, Luz Porrata Doria y Veve, a minor, Raquel Porrata Doria y Veve, a minor, the two latter being represented by their father, Miguel Porrata Doria, María Porrata-Doria y Veve, Guillermo Oppenheimer, her husband, Josefa Veve y Diaz, Prisco Vizcarrondo, her husband, Clotilde Veve y Diaz, widow, and José Sastraño Belaval and Miguel Porrata Doria individually, each and all of the said defendants being citizens and residents of Porto Rico, and says:

I.

That heretofore and between the years 1891 and at all times therein and up to this date plaintiff was the owner in his own right

of those certain four tracts of land situated within the judicial district and in and near the town of Fajardo, Porto Rico, and of all the houses and other improvements thereon, said tracts being described as follows:

1. A tract of land containing three acres purchased from Doña Josefa Quiñones by private document and bounded as follows: on the north by the hacienda Bello Sitio; on the south by the lands of the Sucesión Westén; on the east by the Caño de la Henéa and on the west by the lands of José Lopez.

2. Another tract of six acres purchased from D. José Manuel Flores, with the houses thereon, bounded on the north and south by the Hacienda Bello Sitio; on the east by the old road leading to the Hacienda Convento and on the west by the Caño de la Henéa.

3. Another tract of four and one half acres purchased by private document from D. Avelino Rexach and bounded on the north by the Hacienda Convento and on the south, east and west by the Hacienda Bello Sitio.

3 4. Another tract of 124¾ acres acquired by purchase from D. Andres Avelino Sauri, by private document, which sale was later ratified by public instrument before the notary of Humacao, D. José María Cuadra, bounded as follows: on the north by the Hacienda Convento; south by the lands of Pascual Perez and the tract called "Aldea" and east and west by the hacienda Bello Sitio;

and of the crops growing thereon and lawfully entitled to the proceeds thereof; that during the said years from 1891 to 1901 and up to the time of her death about the latter year, one María Diaz, widow of Veve, aided, advised, counselled and assisted by the said José Sastraño Belaval and Miguel Porrata Doria her sons-in-law, did by means of false and fraudulent claims instituted in the courts of Porto Rico usurp from plaintiff the possession of the said premises and of the said houses and other improvements thereon and of the crops growing on the said premises including the large amount of growing canes, and thereafter up to the time of her death still aided, advised and counselled by the said José Sastraño Belaval and Miguel Porrata Doria and by means of the said false and fraudulent and unfounded judicial proceedings conducted in the courts of Porto Rico has kept plaintiff from the possession, use and enjoyment of the said properties up to this date.

II.

That the said María Diaz, widow of Veve, died about the year 1901 and that since the said time her heirs, viz: the defendants Concepción Veve y Diaz, Josefina Porrata-Doria y Veve, Celina Porrata Doria y Veve, Albertina Porrata-Doria y Veve, Luz Porrata-Doria y Veve, Raquel Porrata-Doria y Veve, María Porrata Doria y Veve, Josefa Veve y Diaz and Clotilde Veve y Diaz, aided, advised

4 and counselled by the said José Sastraño Belaval and Miguel Porrata-Doria did continue the said false, fraudulent and

wrongful judicial proceedings and the forcible possession of the said premises above described and of the houses and other improvements thereon and of the growing crops and the revenues of the said lands compelling the plaintiff during all of the said time to litigate his just rights in the premises until on or about the year 1907 the Supreme Court of Porto Rico decided that the said properties and the improvements thereon belonged to the plaintiff herein and should be returned to him but that the said order and judgment, although fixing the rights of the complainant herein, was rendered in a proceeding for certiorari wherein the Court did not order the execution of the said judgment.

III.

That the said heirs of the said María Diaz, widow of Veve, took her estate without the benefit of inventory and that they and each of them are responsible for the wrongful acts and doings of the said María Diaz widow of Veve as above set out.

IV.

That the said José Sastraño Belaval and Miguel Porrata Doria are possessed in their own right of valuable property in Porto Rico aggregating many thousands of dollars in value.

V.

That during all said time the said María Diaz widow of Veve and the said José Sastraño Belaval and Miguel Porrata Doria first and after the death of the said María Diaz widow of Veve, her heirs as aforesaid and the said José Sastraño Belaval and Miguel Porrata Doria continued to use and enjoy and collect and appropriate to their own use the crops and canes growing on the said premises and the revenue from pasturage and other sources derived therefrom and did destroy, take and remove from the said premises each and every and all of the improvements situated on the same and by means of force and fraud and through the said wrongful and unfounded judicial proceedings did take possession of the said premises and have failed and refused to account to the plaintiff for the value thereof.

VI.

That the value of the said improvements on the said above described premises so taken and removed and destroyed by the defendants herein and their ancestor, the said María Diaz widow of Veve, were reasonably worth the sum of twenty thousand dollars ($20,000.) and that the canes and other crops growing on the said premises at the time of the possession of the same so as aforesaid, wrongfully taken from plaintiff, were worth the further sum of fifteen thousand dollars ($15,000) and that the reasonable value of the use of the said land and of the revenue derived by the said defendants and the said María Diaz widow of Veve from the said

premises amount for the years aforesaid to the sum of twenty five thousand dollars ($25,000.) together aggregating the sum of sixty thousand dollars ($60,000.) to which the plaintiff is entitled.

VII.

That in addition to the foregoing damages plaintiff is entitled to the possession of the said tracts of land and each of them.

6 Wherefore plaintiff prays judgment against defendants herein for the possession of the said tracts of land hereinbefore described and against the said defendants including the said José Sastraño Belaval and Miguel Porrata-Doria individually for the sum of Sixty Thousand Dollars ($60,000) damages and for his costs, and as he will ever pray.

HENRY F. HORD,
Attorney for Plaintiff.

San Juan, Porto Rico, February 7, 1908.

JOSÉ AVALO SANCHEZ, Plaintiff,
vs.
JOSÉ SASTRAÑO BELAVAL et al., Defendants.

Answer to Amended Complaint.

(Filed Feb. 25, 1908.)

Come now the above named defendant, Josefina Porrata Doria y Veve, Julio Ferrer Torres, her husband, Celina Porrata Doria y Veve, Albertina Porrata Doria y Veve, Luz Porrata Doria y Veve, a minor, Raquel Porrata Doria y Veve, a minor, the two latter being represented by their father, Miguel Porrata Doria, María Porrata Doria y Veve, Guillermo Oppenheimer, her husband, Miguel Porrata Doria and Josefa Veve y Diaz, Prisco Vizcarrondo, her husband, Clotilde Veve y Diaz, widow, by José de Guzmán Benitez and Charles Hartzell and Manuel Rodriguez Serra, their

7 attorneys, and for their answer to the amended complaint of plaintiff filed they and each of them, jointly and severally allege and state:

For a first defense to the said amended complaint these defendants say that they deny each and every material allegation therein set forth and contained.

And for a second and further answer and defense to the amended complaint in said cause, these defendants allege, that theretofore and prior to the 28th day of May, 1885, the above named plaintiff was the owner and was in possession of that certain tract or parcel of land lying, being and situated in the barrio of Quebrada Fajardo in the Municipal District of Fajardo, in the Island of Porto Rico, and known as the Hacienda Bello Sitio, the same consisting of four hundred cuerdas of land, and being more particularly described as follows, to wit:

Being bounded on the north by the lands of Doña Isabel Siaca, and lands of the Hacienda Convento, of Doña Pilar Becerril y Torres; being bounded on the east by the lands of Nicolás Telémaco, of Don Benigno and Sebastiana de Santiago; on the south by the property known as Ausubal, belonging to the succession of Doña Alejandrina Becerril y Torres, lands of José Concepción Lopez, with lands of the Successors of Alberto Westen, and by the carretera leading from Luquillo to Fajardo, and on the west by lands of Enrique Garcia, by lands of Nicolás Perez and by lands of Gervasio Rivera. And that said tract of land of four hundred cuerdas and known as the Hacienda Bello Sitio includes the several parcels of lands described in the plaintiff's complaint herein.

8 That on the said 28th day of May, 1885, the said plaintiff José Avalo Sanchez, executed in favor of María Diaz y Siaca, widow of Veve, a mortgage on the said Hacienda Bello Sitio, as hereinbefore described, together with its buildings, machinery, sheds, furnaces, sugar mill, residence for owners and residence for peones, the sugar canes growing on said lands, cars bulls and other implements, including all of the real and personal property connected with the said Hacienda Bello Sitio, and used in connection therewith to guarantee the payment of the full sum of five thousandd six hundred pesos, with interest thereon, as agreed upon, the said mortgage being duly registered in the Registry of the Property at Humacao, in volume 1 of Fajardo, folio 45, finca No. 9 third inscription.

That the said plaintiff, José Avalo Sanchez, having failed to pay the moneys secured by said mortgage or any part thereof, when the same became due, the said María Diaz y Siaca the owner and holder of said mortgage, instituted her suit before the Court of the First Instance of the District of Humacao, on the 11th day of February, 1889, for the execution and foreclosure of the said Mortgage and the interests thereon. And that on the 21st day of February of the same year, the Judge of the said Court of First Instance, in the said foreclosure proceedings, ordered the seizure and embargo of the following properties, to-wit:

"Rustical property, sugar cane plantation, situated in the barrio of Quebrada Fajardo, in the Municipal District of Fajardo, containing four hundred cuerdas of land, equivalent to 157 hectareas, 21 ares, and 59 centiares, with its buildings, mashinery sheds, furnaces, and all implements of bullers and tanks, sugar mill, molasses tank, sugar store house, dwelling houses for the owners and for the peones, store house, cane plantations, which were one hundred and thirty two cuerdas standing, of different sizes and ages; thirty three cuerdas recently planted, twenty one hogsheads, more or less, or sugar already made, in the sugar tanks, one iron wheel, for brick making; the said lands being bounded on all sides in accordance

9 with the description as the same appears in the said mortgage."

Also, there were embargoed at the same time, and by virtue of the same order the following personal property, to wit: 27 oxen, 14 carros with wooden axles, 2 large carts for carrying straw, 12 plows

of different system, twenty empty hogsheads, and other minor personal property.

That on the 29th day of August, 1891, the said real and personal property covered by the said mortgage, and which had been embargoed as herein before described, was, in accordance with the orders of the Court, in said foreclosure proceedings, offered for sale at public auction, and the same was sold, and adjudicated to the said María Diaz, widow of Veve, for the sum of ten thousand and nine hundred and thirty nine pesos and thirty four centavos and that on the thirtieth day of October, 1891, the said María Diaz widow of Veve, as such purchaser of said property was by the order of the said Court put into the actual possession of the said real and personal property as aforesaid, with the exception of such parts and portion of the machinery, buildings, and personal property as had been removed and destroyed by the said plaintiff prior to the time of the said sale, the said sale having been approved by the Court on the 31st day of August, 1891.

That on the 18th of December, 1891, in pursuance of the sale of the said property, as herein before alleged, and in accordance with the laws of Porto Rico, the judge of the said Court of First Instance of Humacao, executed to the said María Diaz, widow of Veve before the notary Marcelino Estevanez y Nanaclares, a deed for the said premises, which included the buildings, machinery, and personal property, in addition to the four hundred cuerdas of lands comprising the said Hacienda Bello Sitio, as described in the said
10 mortgage, and which said hacienda Bello Sitio, as therein described included the parcels or tracts of land described in the plaintiff's complaint herein, which said deed was duly inscribed in the Registry of the Property of Humacao, in Volume 31 of Archive 5 of Fajardo, folio 237, vuelto, finca number 9, duplicate, inscription 7th by the Registrar of Property of said District, Feliciano Piñol.

That in the month of August, 1891, and while the said foreclosure proceedings herein before described were pending, and at about the time of the sale of the said premises to the said María Diaz, widow of Veve, certain persons claiming to be creditors of the said plaintiff José Avalo Sanchez, instituted proceedings in the Court of First Instance of San Francisco District, in San Juan, known as a concurso of creditors, and that in the said proceedings the petitioner represented and pretended to the said Court of San Francisco that the said Avalo Sanchez was the owner of the said Hacienda Bello Sitio describing the same practically as the said María Diaz widow of Veve, and also it was represented to the said Court that the said José Avalo Sanchez was the owner of certain other tracts or parcels of land, the same being the identical tracts of land and with the same description as are — forth in plaintiff's complaint herein; and these defendants allege that the said tract of land described in plaintiff's complaint herein and also described in the said creditors' complaint herein and also described in the said creditors' proceedings constituted a part and portion of the said Hacienda Bello Sitio, as is fully shown by the description thereof containing in the mortgage exe-

cuted by the said José Avalo Sanchez to the said María Diaz widow of Veve, as herein before set forth, and these defendants allege
11 that in describing the said tracts of land in the said creditors' proceedings, as being separate and distant from the lands comprised in the Hacienda Bello Sitio, was a fraud on the Court and was an attempt to take from the said María Diaz widow of Veve a part and portion of the property comprised in the said Haciendo Bello Sitio which has been also sold and adjudicated to her by virtue of the said Mortgage as aforesaid.

That such proceedings were had in connection with said concurso of creditors, that the said Court of 1st instance of San Francisco, on the 27th of April, 1896, directed that the Court of First Instance of Humacao should deliver to the depository named in said concurso possession of the portions and pieces of lands described in the said creditors' proceedings to wit: the said Hacienda Bello Sitio, and the said four portions of land as described in the plaintiff's complaint herein. That the said Court of First Instance of Humacao directed the Municipal Court of Fajardo to execute the said order, and that the said Municipal Court of Fajardo in compliance with said order, on the 25th day of May, 1896, went to the place where said lands were supposed to be and ascertained and so reported the fact that the only property which had belonged to the said José Avalo Sanchez according to the description as contained in said order, was that comprised in the said Hacienda Bello Sitio, consisting of the said four hundred cuerdas, of land, and that as to the balance of *the balance of* the said parcels of land, that the same could not be found. And that in accordance with the said order, the Municipal Court of Fajardo gave possession to the said depository of the said four hundred cuerdas of land comprising the said Hacienda Bello Sitio, together with such machinery and buildings as existed at said time thereon. That the possession of the said hacienda Bello Sitio continued to be in the said depos-
12 itory of said creditors' proceedings, but for the benefit of the creditors of the said José Avalo Sanchez, until the 20th day of May, 1901, on which date the said creditor proceedings having been abandoned, the heirs of the said María Diaz widow of Veve, who had died in the meantimes, secured an order from the District Court of San Juan, for the return to whom of the possession of the said hacienda Bello Sitio as the owners thereof and that such possession was duly delivered to them in pursuance of said order. That thereafter certain other proceedings were had in connection with the possession of *the possession of* the said property, as between the said concurso and the said heirs of María Diaz widow of Veve, the said heirs continuing in the possession of the said Hacienda Bello Sitio, as described in the deed executed to the said María Diaz widow of Veve, and that the said proceedings ended with a decision of the Supreme Court of Porto Rico dated the 21st day of February, 1907, by which said decision of the Supreme Court, it was ordered and decreed, among other things that the possession and occupation of the properties taken by virtue of said concurso should be vacated and concluded, and that of the properties so taken by virtue of said

proceedings, the same should be returned to the possession of the said plaintiff José Avalo Sanchez, provided there should be no other legal reason preventing the same, with the exception of the Hacienda Bello Sitio which was ordered to be returned to the heirs of Doña María Diaz widow of Veve, and which judgment of the Supreme Court of Porto Rico remains in full force and effect and the same has been remanded to the District Court of San Juan for execution. That these defendants are all heirs or legally interested in the inheritance of the estate of the said María Diaz, widow of Veve, having succeeded her in the ownership of the said hacienda Bello Sitio.

13 These defendants allege that from the time of the execution of the said sale, to the said María Diaz, widow of Veve, of the said Hacienda Bello Sitio, the said María Diaz widow of Veve, and since her death, her heirs have been at all times the owners of and entitled to the exclusive possession of the said Hacienda Bello Sitio together with the machinery, buildings, and other property which was foreclosed and sold to the said María Diaz widow of Veve and that they have been during all of said time entitled to all of the crops and proceeds of said Hacienda and the machinery and buildings connected therewith, as the owners thereof, and that the said plaintiff during all of said time has not had any right title or interest in or claim against the said property, either by reason of said creditors' proceedings or for any other reason whatsoever in any of the crops, proceeds buildings, or other property in connection therewith, nor has he been entitled at any time to receive any revenue derived from the said property during said time or to any interest whatsoever, therein.

Wherefore, having fully answered said Amended complaint, these defendants pray to be hence dismissed with their costs in this behalf expended.

JOSÉ DE GUZMÁN BENITEZ,
HARTZELL & RODRIGUEZ SERRA.
Attorneys for Said Defendants.

14 JOSÉ AVALO SANCHEZ
v.
JOSÉ SASTRAÑO BELAVAL et al.

Demurrer to Amended Complaint.

(Filed March 10, 1908.)

The above-named defendants, Concepción Veve y Diaz, José Sastraño Belaval, her husband, and the latter also individually, through their attorneys J. A. Poventud and H. S. Belaval, demur to the amended complaint filed herein, and for cause of demurrer allege:

1. That the amended complaint does not state facts sufficient to constitute a cause of action.

2. That the amended complaint is unintelligible and uncertain

in that plaintiff says he is and was the owner of the tracts of land described in amended complaint, by private documents, one of which he avers was ratified by public instrument; but without alleging their inscription in the proper Registry, and without stating that said defendants lack or have lacked all title or right to the possession of said tracts. Hence, it may properly be supposed that said defendants have or may have had a better inscribed title or right to possess said lands, and being third persons, according to art. 1850 and 1247 of Civil Code of P. R., plaintiff's title, and supposed right to possess the parcels of land aforesaid, would not be good as against said defendants, and therefore the latter's alleged possession of aforesaid premises during the time set forth in amended complaint may have been under a better title paramount right than plaintiff's; therefore no damages could have ensued therefrom. It is further unintelligible and uncertain in that: the allegation as to the time when María Diaz widow of Veve supposedly usurped the possession of said lands, is not stated with the clearness and precision required by law and the circumstances of the case.

Statute of Limitation.

3. That the plaintiff's cause of action to recover the supposed damages alleged in his amended complaint is barred upon its face because it is averred that the supposed wrongful acts of defendants occurred during the years 1891 and 1901 and the action was brought in 1907, consequently according to art. 1869 paragraph 2nd of Civil Code of P. R. the claim herein should have been instituted within one year from the time "the aggrieved person had knowledge thereof" and as it clearly appears from amended complaint that plaintiff had knowledge of said illegal acts of defendants at the latest in 1901, it follows that the action herein is barred as it should have been brought within one year from the date last aforesaid.

The action herein is further barred because if the defendants took possession of the premises in question in 1891 or in 1901, one year thereafter their supposed wrongful possession was legalized according to paragraph No. 1 of art. 1869 of the Civil Code of P. R. and therefore said alleged wrongful possession could have occasioned no damages since the wrongful character of said original possession ceased after one year's lapse of time.

Wherefore, defendants Concepción Veve y Diaz, José Sastraño Belaval, her husband, and the latter individually, pray that the amended complaint herein be dismissed with costs.

H. S. BELAVAL,
JOSÉ A. POVENTUD,
Attorneys for Defendants.

16 JOSÉ AVALO SANCHEZ
vs.
JOSÉ SASTRAÑO BELAVAL et al.

Motion.

(Filed March 10, 1910.)

Now come the defendants herein Concepción Veve y Diaz, José Sastraño Belaval, her husband, and the latter individually, through their attorneys J. A. Poventud and H. S. Belaval, and respectfully move the Court for an order setting aside plaintiff's amended complaint filed herein, for the reasons following, to wit:

1. Because the leave to amend plaintiff's original complaint was obtained by him without giving notice of his motion to amend to defendants above named or their attorneys which requisite should have been fulfilled by said plaintiff, as the procedure to obtain leave to amend a pleading already submitted to decision is by a contested and not an ex parte motion. Notice of plaintiff's motion to obtain leave to amend his complaint should have been given to defendants or their attorneys in accordance with rule 4 of the Rules of the District Court of U. S. for Porto Rico.

2. Because there is no material change or difference or addition whatever between plaintiff's original and amended complaints, for the addition of three lines at the end of the II averment of amended complaint, which refer to a judgment of the Supreme Court of Porto Rico in a certiorari proceeding, does not in any way vary, alter or change the original complaint, and the addition of
17 allegation *VII* in the amended complaint,to the effect that plaintiff is entitled to the possession of the tracts of land described in said complaint, dos not in reality vary, alter or add anything to the original complaint, because said statement is clearly made and comprised in the two last paragraphs of the first allegation of original complaint; but in so far as plaintiff attempts to add to his prayer of the amended complaint the words "for the possession of the said tracts of lands hereinbefore described", which is the only difference between the prayer of the original and amended complaints, he is not entitled to make such amendment, since that would be changing entirely the relief prayed for in the first complaint; the first prayer being for $60,000 damages including the land (see paragraph IV of old complaint) and the second prayer being for $60,000 damages and besides for the possession of the land set forth in complaint.

H. S. BELAVAL,
Attorney for Defendants.

JOSÉ A. POVENTUD,
Attorney for Defendants.

To Mr. Henry F. Hord, Attorney for plaintiff:

You are hereby notified that the foregoing motion will be called for hearing on the 6th day of April 1908, at the District Court of

U. S. for P. R., sitting at Ponce, at 9 o'clock A. M., or as soon thereafter as the Court is able to hear it at Ponce.

Ponce, March 7th, 1908.

H. S. BELAVAL,
JOSÉ A. POVENTUD,
Att'n'ys for D'f'ts.

18 (Journal Entry, April 6, 1908.)

At Law. No. 480.

JOSÉ AVALO SANCHEZ
vs.
JOSÉ S. BELAVAL et al.

This cause comes on to be heard upon the motion to strike the amended complaint from the files, H. F. Hord, Esq., appearing for the plaintiff, and C. M. Boerman, Esq., representing counsel for the defendants, and, the Court being advised, it is ordered that a motion be, and the same is hereby overruled. It is further ordered that issue on the demurrer heretofore filed by the defendants be set down for a hearing on the 8th instant, the Clerk of the Court to notify Messrs. Belaval and Poventud in the mean time.

(Journal Entry, April 8, 1908.)

No. 480.

JOSÉ AVALO SANCHEZ
vs.
JOSÉ S. BELAVAL et al.

In this cause the matter of the demurrer interposed by José S. Belaval and wife comes on to be heard, N. B. K. Pettingill, Esq., representing the defendants as to the demurrer for the time being only, because their regular counsel is absent, and Henry F. Hord, Esq., representing the plaintiff, and the Court having heard said counsel respectively, and being fully advised in the premises orders:

That the said demurrer be, and the same hereby, is over-
19 ruled, and the said defendants named in said demurrer are required to answer within ten days, to which action of the Court the said defendants by their temporary attorney, N. B. K. Pettingill, Esq., then and there duly except.

JOSÉ AVALO SANCHEZ
vs.
JOSÉ SASTRAÑO BELAVAL et al.

Answer.

(Filed April 13, 1908.)

The defendants herein Concepción Veve y Diaz, José Sastraño Belaval, her husband, and the latter individually through their attorneys J. A. Poventud and H. S. Belaval, file their answer to the amended complaint in the above entitled action as follows:

1. They deny generally and specifically each and every allegation and statement in said amended complaint contained. And said defendants further allege:

A. That Doña María Diaz widow of Veve acquired the tract of land known as "Bello Sitio" composed of 400 cuerdas, by virtue of the foreclosure of a mortgage on said property against plaintiff herein, which proceedings terminated with the adjudication of said property to her by the Court of Humacao in satisfaction of said mortgage claim, which said Court gave her judicial possession of same *on* or about the year 1891; these 400 cuerdas being the only property with which plaintiff may have been connected and with which defendants have had anything to do.

20 B. That by reason of certain simulated bankruptcy proceedings in the extinguished San Francisco Court of First Instance at San Juan said María Diaz widow of Veve was deprived of the possession of said land till 1901, when the District Court of San Juan, said bankruptcy proceedings having been abandoned, ordered the redelivery of said property "Bello Sitio" to her, which decision was confirmed by the Supreme Court of Porto Rico, after said plaintiff attempted to impede the taking possession of said finca by means of several fraudulent and malicious proceedings in the District Court of San Juan above named.

C. That neither Doña María Diaz nor defendant *have* ever possessed any or all of the tracts of land described in plaintiff's amended complaint or *have* ever sustained judicial proceedings upon them, because said tracts of land never existed nor do they actually exist, except in plaintiff's mind.

And defendants further allege:

1. That there is another suit pending between the same parties, for the same cause, and in the same court, because although the boundaries of the parcels of land set forth in plaintiff's amended complaint appear to be different and distinct from those of the Hacienda Bello Sitio, of 400 cuerdas before named, yet, said boundaries are totally imaginary and have been invented by plaintiff for the purpose of this action.

2. That the only parcel of land to which the amended complaint herein may in reality refer is the Hacienda Bello Sitio aforesaid which is the subject of the Equity suit between the same parties herein now pending before this Honorable Court.

And said defendants further aver:

A. That plaintiff's cause of action to recover the supposed damages alleged in his amended complaint is barred, because it is averred that the supposed wrongful acts of defendants occurred during the years 1891 and 1901 and the action was brought in 1907, whereas according to art. 1869 paragraph 2 of Civil Code of P. R. the claim herein should have been instituted within one year from the time "the aggrieved person had knowledge thereof", and, as it clearly appears from amended complaint, that plaintiff had knowledge of said illegal acts of defendants at the latest in 1901, it follows that the action herein is barred as it should have been instituted within one year from the date last aforesaid.

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Wherefore defendants Concepción Veve y Diaz, José Sastraño, Balaval her husband, and the latter individually, pray that the amended complaint herein be dismissed with costs.

JOSÉ A. POVENTUD,
H. S. BELAVAL,
Attorneys for Defendants.

(*Motion. Filed April* 14, 1908.)

Law. No. —.

JOSÉ AVALO SANCHEZ
vs.
JOSÉ SASTRAÑO BELAVAL et al.

Now come the defendants, Concepción Veve y Diaz, José Sastraño Belaval, her husband, and the latter individually, through their attorneys, J. A. Poventud and H. S. Belaval and move this Honorable Court to dismiss this case for the reason that plaintiff's amended complaint does not state a cause of action against defendants within the jurisdiction of this Court and consequently the Court has no jurisdiction of the subject of the action, because it is stated in the second averment of amended complaint that the matter of the right to possess the tracts of land therein specified was finally adjudicated by the Supreme Court of Porto Rico in a proceeding of certiorari "wherein said Supreme Court did not order the execution of said order and judgment," and it is clear that if the matter of the possession of said parcels of land was finally decided in the Supreme Court of P. R. in plaintiff's favor, this latter Court, and not the Federal Court, is the one with authority to execute its judgment, for, when jurisdiction is conferred on a Court, all the names necessary to carry it into effect are also given: Sect. 36 Code of Civil Procedure of P. R.

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The Supreme Court of Porto Rico, having first obtained jurisdiction in that matter, it must be let to carry it into effect, otherwise said Insular Court would be ousted of its acquired jurisdiction, which is concurrent with that of this District Court of U. S.

Plaintiff states in his amended complaint that "*on* or about the year 1907 the Supreme Court of P. R. decided that said properties and improvements thereon belonged to plaintiff herein and should be returned to him but that the said order and judgment, although fixing the rights of the complainant herein, was rendered in a proceeding for certiorari wherein the Court did not order the execution of the said judgment;" and this Court having ruled against us on the question of prescription raised by our demurrer already argued, on the ground that plaintiff affirmed in his said amended complaint that he continued the litigation of his rights in the Insular Court as aforesaid, therefore according to what precedes, it is obvious that the plaintiff has a right to go into the competent Insular Tribunal and ask for an order of execution of that
23 judgment. Sect. 36 supra and Act of March 10, 1904, authorizing writs of certiorari. But he cannot pretend, as he does, to convert this Court of U. S. into a marshal for the purpose of carrying into effect the judgment of the Supreme Court of P. R., unless it be his intention to compel us to litigate in this Federal Court anew what has been finally decided by the competent Insular Court aforesaid.

The damages asked by plaintiff herein, being dependent upon said plaintiff's recuperation of the premises in question, he must wait till he takes possession of those lands under the authority and by virtue of the Supreme Court of Porto Rico's order. We are clearly entitled to raise this point at this stage of the litigation under the authority of Act of March 3, 1875, 18 Stat. at L. 470, sec. 5; Nashua R. R. Co. vs. Lowell R. R. Co., 136 U. S. 373; R. R. Co. vs Swan, 111 U. S. 379; and Section 109 of Code of Civil Procedure of P. R.

Wherefore, defendants above-named pray that this cause be dismissed from this Court and that *he* go hence without day.

H. S. BELAVAL,
JOSÉ A. POVENTUD,
Attorneys for Defendants.

NOTICE.—You are hereby notified that the foregoing motion will be called for hearing on the twelfth day of May, 1908, at the District Court of U. S. for P. R., sitting at Ponce, at 9 o'clock A. M., or as soon thereafter as the Court is able to hear it at Ponce.

Ponce, April 13, 1908.

H. S. BELAVAL,
JOSÉ A. POVENTUD,
Att'n'ys for Def'ts.

24 JOSÉ AVALO SANCHEZ, Plaintiff,
versus
JOSÉ SASTRAÑO BELAVAL et al.

Replication.

(Filed April 28, 1908.)

Comes the plaintiff herein by his attorney of record and denies that his cause of action herein is barred by the provisions of Article 1869, paragraph 2 of the Civil Code of Porto Rico, or by those of any other law in Porto Rico.

Wherefore he prays judgment as — his complaint herein is set out.

HENRY F. HORD,
Attorney for Plaintiff.

San Juan, P. R., April 28th, 1908.

(*Journal Entry, October* 29, 1908.)

Law. 480.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCIÓN VEVE et al.

This matter comes on to be heard on the motion of H. S. Belaval and wife to dismiss. It appears that H. S. Belaval, instead of appearing in court to present the motion to dismiss, files a written statement in which he waives argument in the premises. Thereupon H. F. Hord, Esq., appearing for the plaintiff, presents his argument in opposition to the motion to dismiss, and the
25 Court being fully advised in the premises, overrules said motion and sets the cause down for trial on the merits on November 17th.

(*Journal Entry, November* 18, 1908.)

No. 480. Law.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCIÓN VÉVE et al.

This cause comes on for trial, and comes also the plaintiff José Avalo Sanchez in his own proper person and by his attorney Henry F. Hord, Esq., and come also the defendants by their attorneys José A. Poventud, H. S. Belaval, José de Guzman Benitez, and Hartzell & Rodriguez Serra, and comes also a partial jury, that is to say: José Carrión, Pedro Santoni, Frank H. Beardsley, E. M.

Amy, Antonio Cosme, José Pou, James Ramsay, B. F. Murphy, Gustavo Fort, L. G. McGuigan, and Joseph H. Spear, and thereupon the panel of regular jurors in the premises being exhausted, the Marshal is ordered to summon talesmen in the premises, and therefrom is selected Felipe Le Hardy, who, having been duly examined and found fully qualified, is sworn and impaneled as the twelfth juror in the premises, all of said jurors being good and lawful men chosen from the body of the district of Porto Rico, and duly sworn and impaneled to try the issues joined between the parties.

Thereupon, before proceeding with the trial of the cause on the merits, José A. Poventud of counsel for the defendants, moves for judgment on his plea to the jurisdiction because of the failure of plaintiff to reply to the same within the time provided by
26 the statute and the rule, and the Court having heard the parties with reference to such motion, denies the same. Whereupon the trial of the cause in regular course is proceeded with, and the same not being ended at the adjournment hour, the further hearing of the cause is continued until Thursday, November 19, 1908.

(*Journal Entry, November* 19, 1908.)

Law. 480.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCIÓN VEVE et al.

The trial of this cause on the merits proceeds as on yesterday, and the plaintiff having announced that its case in chief is finished and that it rests, the counsel for the several defendants move that the jury be instructed to return a verdict for the defendants, whereupon the Court excuses the jury under proper instructions from attendance during the arguments as to said motion, and thereafter, in the jury's absence, hears counsel pro and con as to the same; and thereafter, being fully advised, overrules said motion. Whereupon the jury is recalled and the trial of the cause is proceeded with, and not being finished at the adjournment hour, is continued until tomorrow, at 9:30 o'clock A. M.

27 (*Journal Entry, November* 20, 1908.)

Law. 480.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCIÓN VEVE et al.

The trial of the issues in this cause not having been finished on yesterday, the same is now on this date continued, additional testimony of witnesses and exhibits being introduced; and now at

the adjournment hour the same not being concluded, the further hearing thereof is continued over until Saturday, November 21st, at 9:30 A. M.

(*Journal Entry, November* 21, 1908.)

Law. 480.

José Avalo Sanchez
vs.
Concepción Veve et al.

The trial of this cause not having been finished on yesterday, is now again proceeded with, and introduction of testimony being finished and arguments of counsel being concluded, the Court thereupon delivers its instructions to the jury and they retire in the custody of the U. S. Marshal to consider of their verdict.

Thereupon counsel for the plaintiff requests and is granted leave to dismiss the cause as to H. S. Belaval and wife as to any personal damages in the case, which is hereby considered as done.

28 (*Journal Entry, November* 23, 1908.)

Law. 480.

José Avalo Sanchez
vs.
Concepción Véve et al.

Come now the jury in the above entitled cause in charge of the U. S. Marshal, and after being duly called and all found present, in reply to the Court's question in that regard, announce that they find it impossible to come to an agreement on the issues involved, and it appearing that the said jury have had this matter under consideration for the past forty hours, and that it appears to be impossible for them to agree upon a verdict, they are discharged from further consideration of the case, and it is restored to the docket.

Thereupon Henry F. Hord, counsel for the plaintiff, petitions the Court for permission to withdraw certain exhibits for the plaintiff herein, and counsel for the defendant being present and not objecting thereto, it is:

Ordered that plaintiff be, and he hereby is, permitted to withdraw the original exhibits heretofore filed by him, he to leave the translations and a specific receipt for the same, and it is further:

Ordered that the plaintiff shall return said exhibits to the file at any time when called for by the Court.

29 (*Journal Entry, December* 7, 1909.)

Law. 480.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCIÓN VÉVE et al.

Comes now Charles Hartzell, of counsel for the defendants herein, and presents to the Court a motion for the dismissal of this cause, he alleging that this court has no jurisdiction in the premises, and that the issues involved are *res judicata*. H. F. Hord, of counsel for the plaintiff, appears in opposition to the motion. The Court hears lengthy arguments of the above mentioned counsel for the respective parties, and also that of José A. Poventud also of counsel for the defendants, and at the conclusion thereof takes the matter under advisement.

30 (Journal Entry, Dec. 8, 1909.)

Law. 480.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCIÓN VEVE et al.

This cause is called for trial. Thereupon comes the plaintiff in his own proper person and represented by his counsel Messrs. Hord & Scoville, and come the defendants represented by their counsel Messrs. Hartzell & Rodriguez Serra, José A. Poventud, J. de Guzmán Benitez and H. S. Belaval. Whereupon the Court states that the motion to dismiss this cause heard and submitted on yesterday, is denied and announces that it considers the action one of simple ejectment. Thereupon Charles Hartzell of counsel for the defendants, interposes for his clients a plea of the statute of limitations and said same counsel joins with José A. Poventud in a motion to strike that part of the complaint wherein a claim is made for damages and to recover the amount of the crops raised on the lands in question. Thereupon all jurors on the regular panel are requested to retire from the court-room and the Court hears counsel for the respective parties for and against the motion. And at the end of their arguments being advised denies the same for the present. To which action of the Court in thus denying said motion, counsel for the defendants duly object and except. Thereupon before proceeding with the trial, counsel agreeing thereto and for good cause shown, the Court excuses R. A. Nadal and Antonio Blanco from serving as jurors for this day. And it appearing that there are not sufficient jurors present to complete a panel of eighteen the Court directs the Marshal to summon additional persons to complete the
31 same. Thereafter come F. L. Silva, Charles Gray and Izzy Sachs, who after being duly sworn to answer questions, are

found duly qualified to serve as jurors, and they take their place in the jury box, and the panel being thus completed counsel for the parties thereupon exercise the challenges allowed them by law, and the jury to try the cause remains as follows: John Gardner, A. Holst, S. Morgan, José L. Maduro, Henry C. Leonhardt, J. H. Jubb, E. Freiheit, John Edmunds, S. A. Davidson, John A. Wilson, F. L. Silva, and Charles Gray, twelve good and lawful men chosen from the body of the District of Porto Rico, duly sworn, examined and impaneled to try the issues joined between the parties. Thereupon the witnesses for the parties are called, duly sworn and placed under the exclusion rule, and the trial of the cause is proceeded with. Whereupon by agreement of counsel, the defendants are permitted to introduce out of the regular order the testimony of one Jesús Pereyó, Clerk of the District Court of Humacao, and at the conclusion of his testimony the adjournment hour having arrived, and the cause not being finished the further hearing of the same is continued until tomorrow morning.

(Journal Entry, December 9, 1909.)

Law. 480.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCIÓN VEVE et al.

The trial of this cause is proceeded with as on yesterday, parties and counsel present as before, the jury being called and all
32 found present. And thereafter the jury is permitted to retire under proper instructions and the Court hears the arguments of counsel for and against the question of the admissibility of certain alleged records of proceedings had in the Insular Courts during the Spanish regime prior to American occupation of Porto Rico, the same being offered by the plaintiff, and at the conclusion of the arguments being fully advised rules that the said records cannot be introduced as evidence in the cause as statements against interest, because they are not originals, and not made by the parties to be bound at the time mentioned and because they are not properly identified and are extraneous to this cause. And thereafter the question of the right of the plaintiff to recover for the value of the crops on the lands in question comes again before the Court. Counsel present their arguments for and against the proposition and at the conclusion thereof the Court being fully advised, rules that the plaintiff may recover the value of the crops, if any, raised on said lands beginning at a time one year previous to the date of filing this suit in this court, or in lieu of crops the rental value of the land. To which action of the Court in so ruling, counsel for the plaintiff duly object and except. The jury is thereupon recalled and the trial is resumed, and after proceeding for a time counsel for the plaintiff offers in evidence certain documents alleged to be certified copies of originals introduced at the trial of a certain

cause in the Insular Courts. Thereupon the jury is again permitted to retire under proper instructions and the court hears lengthy arguments of counsel for and against the admission of said documents, and at the conclusion thereof being fully advised refuses to permit the introduction of the same. To which action
33 of the Court counsel for the plaintiff duly object and except.

Thereupon counsel for the plaintiff is permitted to state to the Stenographer, for the record, the substance of the documents he intended to introduce and which were refused admission by the court. To which action of the Court in permitting counsel to incorporate in the record said statement, the defendants by their counsel duly object and except. Thereupon the jury is recalled and the trial is proceeded with.

Whereupon by agreement of counsel, the defendants are permitted to introduce the testimony of one of their witnesses, Mr. George Bird Arias, out of the regular order, it being understood that the introduction of the testimony of said witness at this time will not prejudice any rights the defendants may have to make any motion they may desire at the conclusion of the plaintiff's case. And thereafter the adjournment hour having arrived and the cause not being finished the further hearing of the same is continued over until tomorrow morning.

(Journal Entry, December 10, 1909.)

Law. 480.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCIÓN VEVE et al.

In this cause come the parties with their counsel as on yesterday, the jury is called and all answer present, and the trial is
34 proceeded with. Thereupon by agreement of counsel the defendants are permitted to introduce the testimony of one of their witnesses, Mr. José Castro, out of the regular order; and after the trial has proceeded for a time, the jury is permitted to retire under proper instructions, and the Court hears the motion of counsel for the plaintiff for a reconsideration of the ruling made on yesterday, in which the Court denied the right of plaintiff to introduce an alleged transcript of the testimony of Mrs. María Diaz given in a certain trial in the Insular Court. After due consideration of the matter the Court again denies the motion on the ground that it is not an original document and because it does not purport to have been written by herself, and because it is extraneous to this cause. To which action of the Court, counsel for the plaintiff duly object and except. The jury is thereupon recalled and the trial is proceeded with.

Thereafter, at the end of the plaintiff's case, the jury is again permitted to retire under proper instructions, and the court hears the motion of counsel for the defendants for an instruction to the

jury on behalf of their clients, and at the conclusion of the arguments in support of said motion, the same is denied, to which action of the Court, counsel for the defendants duly object and except. Thereupon the jury is recalled and the trial of the cause is resumed and not being finished at the adjournment hour the further hearing of the same is continued over till tomorrow morning, the jury being permitted to separate in the meantime under proper instructions from the Court.

35 (Journal Entry, December 11, 1909.)

Law. 480.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCIÓN VEVE et al.

In this cause come the parties with their counsel as on yesterday, the jury is called and all answer present and the trial is proceeded with, and at the conclusion of the testimony of the witnesses, counsel for plaintiff again renew their motion for a reconsideration of the Court's ruling made on Thursday last wherein the Court refused to admit in evidence an alleged transcript of an alleged declaration against interest of one Mrs. María Diaz from an Insular Court, and the same is again denied by the Court, to which action counsel for the plaintiff duly objects and excepts.

Thereupon counsel for the respective parties present their arguments to the jury, the Court delivers to them its instructions, and they retire to their room in charge of the Marshal to consider of their verdict.

Thereafter, at 5:30 o'clock P. M., come the jury and being called and all found present, they return into court a verdict as follows:

"We, the jury find that the plaintiff is entitled to recover from the defendants the several tracts of land as described in the complaint, together with damages for the wrongful detention thereof in the sum of $4,205.10.

J. H. JUBB, *Foreman.*"

36 The Court thereupon asks the jury if this is their verdict, to which they all respond that it is. Whereupon it is ordered that the said verdict be filed and recorded, and the jury is discharged from the further consideration of the cause.

Wherefore it is ordered and adjudged that the plaintiff, José Avalo Sanchez, do have and recover of and from the defendants Concepción Veve y Diaz, José Sastraño Belaval her husband, Josefina Porrata Doria y Veve, Julio Ferrer y Torres, her husband, Celina Porrata-Doria y Veve, Albertina Porrata Doria y Veve, Luz Porrata Doria y Veve, a minor, Raquel Porrata Doria y Veve, a minor, the two latter being represented by their father Miguel Porrata Doria, María Porrata-Doria y Veve, Guillermo Oppenheimer her husband, Clotilde Veve y Diaz, widow, and José Sastraño Belaval

and Miguel Porrata Doria individually, those certain four tracts of land situated within the judicial district and in and near the town of Fajardo, Porto Rico, together with all the houses and other improvements thereon, said tracts of land being described as follows:

1. A tract of land containing three acres purchased from Doña Josefa Quiñones by private document and bounded as follows: on the north by the hacienda Bello Sitio; on the south by the lands of the Sucesión Westén; on the east by the Caño de la Henea and on the west by lands of José Lopez;

2. Another tract of six acres purchased from D. José Manuel Flores, with the houses thereon, bounded on the north and south by the Hacienda Bello Sitio; on the east by the old road leading
37 to the hacienda Convento and on the west by the Caño de la Henea:

3. Another tract of four and one half acres purchased by private document from D. Avelino Rexach and bounded on the north by the Hacienda Convento and on the south, east and west by the Hacienda Bello Sitio;

4. Another tract of 124 and ¾ acres acquired by purchase from D. Andres Avelino Sauri, by private document, which sale was later ratified by public instrument before the notary of Humacao, D. José María Cuadra, bounded as follows: on the north by the Hacienda Convento; south by lands of Pascual Perez and the tract called "Aldea" and east and west by the Hacienda Bello Sitio;

and it is further:

Ordered and adjudged that the plaintiff recover of and from said same defendants the sum of $4,205.10, together with his costs in this behalf laid out and expended, to be taxed; with interest from this date on the principal sum at the rate of six per centum per annum until paid, and that he have execution therefor.

JOSÉ AVALO SANCHEZ, Plaintiff.
vs.
CONCEPCIÓN VEVE et al., Defendants.

Stipulation.

(Filed Dec. 15, 1909.)

It is hereby stipulated and agreed by and between Hord
38 & Scoville, attorneys for plaintiff herein, and Messrs. Hartzell and Rodriguez Serra and José de Guzmán Benitez and H. S. Belaval, attorneys for defendants herein, that the term of four days allowed by law to file a motion for new trial, be extended up to the 31st of December 1909.

H. S. BELAVAL.

HARTZELL & RODRIGUEZ SERRA.
JOSÉ DE GUZMAN BENITEZ.
Attorneys for Defendants.
HORD & SCOVILLE.
Attorneys for Plaintiff.

JOSÉ AVALO SANCHEZ, Plaintiff,
vs.
JOSÉ S. BELAVAL et al., Defendants.

Motion to Set Aside Verdict and Enter Judgment on the Pleadings and Proof.

(Filed Dec. 21, 1909.)

Come now the above named defendants by J. A. Poventud, H. S. Belaval, José Guzman Benitez and Hartzell and Rodriguez Serra, their attorneys, and thereupon they move the Court to set aside and annul and vacate the verdict of the jury herebefore rendered, and to entirely dismiss the said action and discharge the defendants therefrom upon the following grounds, and for the following reasons, to wit:

That as appears from the pleadings and the evidence introduced in said cause the matters and things involved in this controversy have been fully adjudicated and passed upon by the former Porto Rican and present Insular courts of this island, and that
39 the matters and things so involved in said action are wholly res adjudicata; that it is disclosed by the evidence produced in the trial of this cause that subsequent to the foreclosure of the mortgage executed by the plaintiff to the widow Veve, and the judicial transfer of the premises Bello Sitio by the Court of Humacao to the widow Veve and the registration of the said judicial transfer, that the plaintiff instituted and prosecuted the action known as a declarative suit, attacking the said foreclosure proceedings and seeking to nullify and void the same, and that in and by the said proceedings all questions affecting the title, as well as the identity and description of the premises in controversy, and of the premises adjudicated to the widow Veve, were necessarily involved, and that the Court, having full jurisdiction of the parties and the subject matter, are conclusively presumed to have passed upon and determined every question affecting the rights of the plaintiff and the widow Veve and her succession in and to the said premises. That the records of the courts with reference to the said adjudication are duly in evidence in this cause for the consideration of the Court.

That the said matters and things are likewise determined and adjudicated fully by virtue of the decision of the Supreme Court of Porto Rico rendered in the year 1907 in the certiorari proceedings respecting the alleged bankruptcy of the plaintiff, and in and by the subsequent order pursuant to the said certiorari proceedings made and entered by the Honorable Judge del Toro of the District Court of San Juan, in and by which order it was judicially and finally determined that the identical premises which are, and have been, in the possession of defendants herein, are and constitute the property known as Bello Sitio; and that the defendants, as
40 the Succession of the widow Veve were, and are, entitled under the provisions of the decision of the Supreme Court

of Porto Rico in the said certiorari proceedings to continue in the possession of the said premises and as the owners thereof.

That this Honorable Court is without jurisdiction at this time to hear or determine any question affecting the claim of the plaintiff to possess or take from the defendants any part or portion of the lands which have been so in possession of the said defendants, and whose right thereto has been determined by the Insular courts of Porto Rico; and especially that there is an entire failure of evidence on the part of the plaintiff to justify the Court at this time in awarding to the said plaintiff the right of possession or ownership to any portion of the said lands, particularly when it is disclosed by the evidence that the entire rights alleged to belong to plaintiff rests upon deeds long subsequent in date to the registration of the deed under which the defendants are now in possession of said premises.

And defendants, supporting said motion to dismiss this action, further state that the alleged title of the plaintiff under which he seeks to dispossess these defendants of certain portions of the land of which they are now in possession, is entirely illegal and ineffectual under the laws of Porto Rico for the purpose of being used to dispossess these defendants, inasmuch as the only deed produced by the plaintiff to justify his claim of title purports to have been executed by one Sauri and to convey thereby a separate and distinct parcel or portion of land, whereas under the evidence in the cause the only source of title of said Sauri to said premises was a deed from one Gotay conveying a much larger tract of land
41 to the joint ownership of the said Sauri and one Monserrate García; that there is no evidence in this cause of any division of said entire tract having been made, or of what portion, if any, thereof, was or should have become the property of the said Sauri; and that the defendants, as the successors to the interest of the said Monserrate García, have never consented to any division or partition of the lands conveyed by the deed from Gotay.

That it would be a physical impossibility for the Court to execute a judgment based upon the verdict of the jury in this cause for that there is no way to identify or delimit the alleged tract of land assumed to be described in the deed from Sauri to the plaintiff.

And further, in support of said motion, these defendants allege that under the deed introduced in evidence from Gotay to Monserrate García and Sauri, the description and boundaries of the land thereby conveyed was entirely distinct and different from that contained in the deed from Sauri to the plaintiff, and that under the said deed from Gotay the easternmost boundary of the tract therein attempted to be described, was the "Quebrada Fajardo" whereas in 1892 and long after the deed under which these defendants held said premises had been registered, the plaintiff and the said Sauri for the first time created a new description for the said premises in which new boundaries and different boundaries were introduced, and, in said manner, with the appearance of a new finca, distinct and different from Bello Sitio, there were registered in the Office of the Registrar of Property, lands which form integral part of Bello

Sitio property, in favor, first, of Sauri, and afterwards of plaintiff.

42 And further in support of the said motion, these defendants allege that an inspection of the mortgage from the plaintiff to the widow Veve and of the judicial deed on the foreclosure proceedings awarding the said premises to the widow Veve, discloses that the same referred to and covered a single and entire tract of land having well defined boundaries or colindancias; that the plaintiff in this action, being the grantor in the said mortgage and judicial deed, is seeking to recover the possession and have adjudicated within the outer perimeter of the description contained in the said mortgage, and which, as described by the said plaintiff in his evidence, would entirely sub-divide the lands known as Bello Sitio into two separate and non-contiguous tracts, and introducing entirely new boundaries to the said segregated tracts which were not mentioned or in any wise referred to in the mortgage or the judicial deed, and that the description contained in the said mortgage and judicial deed, and the description contained in the said mortgage and judicial deed is not ambiguous or unintelligible, and that the defendants are entitled to continue in the undisputed ownership and possession of the said premises so described in the said mortgage and judicial deed, and that the suit of the plaintiff, being the grantor in the said mortgage, should be wholly dismissed and these defendants discharged therefrom.

Defendants also, in support of said motion, state that there is no proof whatever in this cause as to the citizenship of the plaintiff or the defendants, and that the citizenship of the plaintiff was directly a matter in issue herein by allegation in the

43 complaint and denial in the answer filed by these defendants, and that there is no proof whatever in this cause of the diverse citizenship required by law in order to give to this court jurisdiction of this controversy.

Wherefore these defendants pray the Court to set aside the said verdict and to dismiss the said action as they have heretofore set forth.

J. A. POVENTUD.
H. S. BELAVAL.
JOSÉ DE GUZMAN BENITEZ.
HARTZELL & RODRIGUEZ SERRA.
Attorneys for said Defendants.

José Avalo Sanchez, Plaintiff.
vs.
José S. Belaval.

Motion for New Trial.

(Filed Dec. 21, 1909.)

Come now the above named defendants by J. A. Poventud, H. S. Belaval, José Guxman Benitez and Hartzell & Rodriguez Serra, their

attorneys, and thereupon they move the Court for an order setting aside and holding for naught the verdict of the jury heretofore rendered in the above entitled cause, and to grant to the said defendants a new trial of said cause for the following reasons, to wit:

On account of error committed by the Court in the trial of the said cause in the admission of testimony, and particularly that the Court erred in admitting in evidence and giving to the con-
44 sideration of the jury that certain deed purporting to convey a portion of the premises in controversy from Avelino Sauri to the plaintiff José Avalo Sanchez: also in permitting to be introduced in evidence over the objection and exception of these defendants, the deed purporting to convey a portion of the premises in controversy, together with other premises, from one Gotay to the said Avelino Sauri and to Monserrate García: also in admitting in evidence in said cause and for the submission to the jury, of those certain private documents or agreements purporting to transfer from various persons to the said plaintiff, various small tracts of land which also form a portion of the lands upon which this action is based: also that the Court erred in admitting in evidence an alleged receipt purporting to show that the plaintiff had paid to the said Sauri the sum of Five Hundred Dollars on account of the alleged purchase of a portion of the lands in controversy by the said plaintiff from the said Sauri.

The admission in evidence of all of which documents was duly objected to by the said defendants at the time that the same were presented.

And the defendants further move the Court to set aside the said verdict and grant a new trial to them in the premises for the reason that the Court committed error in its instructions to the jury:

1st. In permitting the jury to determine from the language of the description of the mortgage executed by the plaintiff to the widow Veve, whether, as a matter of fact, the lands in controversy were, or were not, included within the description in said mortgage, whereas it appears from an inspection of the description con-
45 tained in the said mortgage that the same were not ambiguous, unintelligible or uncertain, and that the instructions in question gave to the jury an opportunity to vary or change the terms of a written mortgage and public instrument by means of parole testimony:

2nd. That the Court erred in its instructions to the jury in permitting the jury to determine whether or not any ambiguity existed in the description of the premises as described in the mortgage from the plaintiff to the widow Veve, whereas the existence or non-existence of any ambiguity in said description was a question of law which should have been determined by the Court, and that unless a patent ambiguity should exist the same should not have been submitted to the jury for determination.

That the Court erred in permitting the jury to return a verdict in said cause by the terms of which the single tract of land as described in the mortgage executed by the plaintiff should be divided so as to create two entirely separate and distinct portions, and that

a verdict permitting such a result and creating entirely separate boundaries for such divided tracts and under the ownership of a person not named as an adjoining owner in the original description, could not under any circumstances be considered as an ambiguity, and therefore the same should not have been submitted for the consideration of the jury.

That the Court erred in permitting the jury, by its instruction, to determine as a matter of fact what was the intention of the grantor in the mortgage executed by the plaintiff to the widow Veve, that the said mortgage and description therein contained discloses that there was no ambiguity, and therefore there was no question
46 with reference thereto to be properly submitted to the jury.

Defendants further, in support of said motion, state that the verdict rendered by the jury in the above entitled cause is clearly against the weight of the evidence, it being proven that the defendants are only in the possession of four hundred acres of land, and it was necessary to entitle the plaintiff to recover that he should prove by a preponderance of the testimony that the defendants were in possession of different lands from those described in the mortgage. That the preponderance of the testimony in the case was to the effect that the boundaries of the tract in question had never been changed, and that therefore the plaintiff did not produce the measure of evidence required in order to authorize a verdict by the jury in his behalf.

That the verdict of the jury in this cause is against the law: that it appears from the evidence that the deeds under which the plaintiff seeks to recover the land in question are subsequent in date and subsequent in registration to the deed under which the defendant held the land in controversy, and that a portion of the deeds of plaintiff are private documents which have never been registered and which are therefore entire inadmissible under the laws of Porto Rico for any purpose affecting a prior registered deed.

Also that the jury disregarded the instructions of the Court, in that portion of the Court's instructions to the effect that the parties to a mortgage are bound by the recitals thereof unless there is ambiguity, whereas in the present cause there was no ambiguity, and the verdict of the jury seeks to vary and entirely change the description as contained in the mortgage.

47 Wherefore, on account of the aforesaid errors, and other errors appearing in the records and proceedings in said cause, the plaintiffs pray as hereinbefore set forth.

J. A. POVENTUD,
H. S. BELAVAL,
JOSÉ DE GUZMAN BENITEZ,
HARTZELL & RODRIQUEZ SERRA,
Attorneys for Said Defendants.

(Journal Entry, January 8, 1910.)

Law. 480.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCÍON VEVE et al.

This cause is before the Court for hearing of the defendants' motion to set aside the verdict and for judgment on the pleadings, and also for a hearing of the motion for a new trial, the defendants being represented by Messrs. Hartzell & Rodriguez, José de Guzman Benites, and H. S. Belaval, Charles Hartzell making the arguments for the motions, and Messrs. Hord & Scoville in opposition to the same, (Mr. Hord making the argument), and at the conclusion thereof the matter is taken under advisement. Counsel for the respective parties agreeing thereto, the Court announces that the judgment heretofore entered in this cause will stand suspended and in abeyance until the decision of these motions or the further order of the Court in that regard.

48 No. 480. Law.

San Juan Division.

JOSÉ AVALO SANCHEZ
v.
JOSÉ SASTRAÑO BELAVAL.

Statement Denying a Motion for a New Trial.

(Feb. 12. 1910.)

This cause is before us on a motion for a new trial. It was tried before a Jury for the second time in December, 1909, the trial lasting several days. The motion for a new trial is in and of itself a carefully prepared argument. In addition counsel for both sides of the case argued it orally at length and with great ability.

We have gone over the record and the instructions given at both trials of the cause with great care. The litigation between these parties over this land began during the Spanish régime on this island about 17 years ago and as we have learned and can see from the record and the evidence has been one of the most bitter contentions in a legal way that has taken place on the island during that time. It was fought through several courts to the Supreme Court of Spain in Spanish times, and has been several times before the Supreme Court of the Island since American occupation. Two phases of it both at law and in equity have been before this court almost since its organization and there is a chancery suit regarding it pending at the present time.

With reference to the case at bar every issue connected with it has been contested and fought out time and again by able counsel before us, so that their arguments for a new trial were largely
49 by a repetition of the points heretofore respectively made.

In this particular suit the main question is one of identity of land and as to whether the matter is *res judicata*. We have repeatedly ruled that the matter was not *res judicata*, and that the identity of the land was for the jury. Therefore, the jury having found for plaintiff we do not think we ought to disturb their action. No matter which side wins the case it is sure to go to the Supreme Court of the United States and while that should not be any reason for denying a new trial if it ought in fact to be granted, we only mention it with a view to emphasize our statement that we have ruled on it on the points in the case so often, that we see no reason to change our ruling.

If we were right in letting the case to the jury at all, which we think we were, then we see no reason to set aside their verdict in the case. After the examination we have just given to the record, we are satisfied that if we committed serious error, it was in favor of defendants in excluding certain evidence offered by plaintiff. It will be more satisfactory all around, to have this case passed upon by the Honorable the Supreme Court of the United States. We might state here that every proper legal facility to enable defendants to sue out a writ of error and secure a supersedeas will be granted.

We are therefore constrained to deny the motion for a new trial and an order to that effect will be entered.

B. S. RODEY, *Judge*.

50 (*Journal Entry, Feb.* 12, 1910.)

Law. 480.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCIÓN VEVE et al.

This cause having heretofore been duly argued and submitted on the motion for a new trial, and the Court being now fully advised in the premises, sends a statement to the files giving its reasons therefor, and in accordance therewith, it is:

Ordered and adjudged,—that the motion for a new trial herein be and the same hereby is overruled and denied, and it is further:

Ordered and adjudged directly from the bench, although the same is not mentioned in the Court's said statement, that the motion for judgment *non obstante verdicto* which was submitted at the same time as the motion for a new trial, be and the same hereby is in like manner overruled and denied, and it is further:

Ordered and adjudged that the judgment entered herein on the 11th day of December, 1909, and which was thereafter held in abeyance pending the motion for a new trial and the motion for a judgment non obstante, be and the same hereby is made absolute

from this date, subject to the right of the defendants to file a writ of error and secure supersedeas in the premises as may be proper according to law. To which action of the Court in thus denying said motion for a new trial, and said motion for judgment *non obstante verdicto*, the said defendants by their attorneys duly object and except.

51 Law. No. 480.

JOSÉ AVALO SANCHEZ, Plaintiff,

vs.

CONCEPCIÓN VEVE Y DIAZ, JOSÉ SASTRAÑO BELAVAL, Her Husband; Josefina Porrata Doria, Julio Ferrer Torres, Her Husband; Celina Porrata Doria y Veve, Albertina Porrata Doria y Veve, Luz Porrata Doria y Veve, a Minor; Raquel Porrata Doria y Veve, a Minor, the Two Latter Being Represented by Their Father, Miguel Porrata Doria; Maria Porrata Doria y Veve, Guillermo Oppenheimer, Her Husband; Josefa Veve y Diaz, Prisco Vizcarrondo, Her Husband; Clotilde Veve y Diaz, Widow, and José Sastraño Belaval and Miguel Porrata Doria, Individually, Defendants.

Petition for a Writ of Error and Supersedeas.

(Filed Feb. 18, 1910.)

The defendants in the above-entitled cause, feeling themselves aggrieved by the verdict and the judgment of the District Court of the United States for Porto Rico, entered thereon on the 12th day of February nineteen hundred and ten, come now, by their respective attorneys, and petition said Court for an order allowing said defendants to prosecute a writ of error to the Honorable Supreme Court of the United States, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendants shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said writ of error by the Honorable Supreme Court of the United States.

And your petitioners will ever pray.

HARTZELL & RODRIGUEZ SERRA,
JOSÉ DE GUZMAN BENITEZ,
H. S. BELAVAL, *Attorneys for Defendants.*

52 In the District Court of the United States for Porto Rico, Sitting at San Juan.

José Avalo Sanchez, Plaintiff,

vs.

Concepción Veve y Diaz, José Sastraño Belaval, Her Husband; Josefina Porrata Doria, Julio Ferrer Torres, Her Husband; Celina Porrata Doria y Veve, Albertina Porrata Doria y Veve, Luz Porrata Doria y Veve, a Minor; Raquel Porrata Doria y Veve, a Minor, the Two Latter Being Represented by Their Father, Miguel Porrata Doria; Maria Porrata Doria y Veve, Guillermo Oppenheimer, Her Husband; Josefa Veve y Diaz, Frisco Vizcarrondo, Her Husband; Clotilde Veve y Diaz, Widow, and José Sastraño Belaval and Miguel Porrata Doria, Individually, Defendants.

United States of America,
Island of Porto Rico, ss:

José S. Belaval being first duly sworn on his oath deposes and says that he is one of the defendants in the above entitled cause, that he knows the property in dispute therein and its value and that the value of the possession thereof and the amount of the verdict for damages allowed in said cause exceeds, exclusive of interest and costs the sum of Five Thousand Dollars.

JOSÉ S. BELAVAL.

Subscribed and sworn to before me this 18th day of February, A. D. 1910.

[Seal of the Dist. Court of the United States for Porto Rico.]

JOHN L. GAY.
Clerk Dist. Court of U. S. for P. R.

53 Law. No. 480.

José Avalo Sanchez, Plaintiff,

versus

Concepción Veve y Diaz, José Sastraño Belaval, Her Husband; Josefina Porrata Doria, Julio Ferrer Torres, Her Husband; Celina Porrata Doria y Véve, Albertina Porrata Doria y Véve, Luz Porrata Doria y Véve, a Minor; Raquel Porrata Doria y Véve, a Minor, the Two Latter Being Represented by Their Father, Miguel Porrata Doria; Maria Porrata Doria y Véve, Guillermo Oppenheimer, Her Husband; Josefa Véve y Diaz, Frisco Vizcarrondo, Her Husband; Clotilde Véve y Diaz, Widow, and José Sastraño Belaval and Migual Porrata Doria, Individually, Defendants.

Assignment of Errors.

(Filed February 18, 1910.)

Now come the defendants in the above entitled cause and file the following assignment of errors upon which they and each of them

will rely upon their prosecution of the writ of error in the above entitled cause.

I.

That the District Court of the United States for Porto Rico
54 erred in overruling the demurrer interposed by defendants and plaintiffs in error to the amended complaint filed in said cause.

II.

That the court erred in overruling the motion for dismissal of the said action, presented at the opening of the trial thereof and duly set forth in the transcript of the testimony filed herein.

III.

That the court erred in overruling the motion made at the beginning of the trial, to strike out those portions of the amended complaint asking for damages in the premises.

IV.

The court erred in admitting in evidence a certain document purporting to be an agreement of sale entered into between the plaintiff and one Avelino Sauri and dated in 1885, the same being admitted over the objection and exception of the defendants and being marked Exhibit "A" for the plaintiff.

V.

The court erred in admitting in evidence a certain receipt for money, paid by the plaintiff to one Avelino Sauri, on account of the alleged purchase of the premises in controversy, the same being marked Exhibit "B" for the plaintiff.

VI.

The court erred in admitting in evidence a copy of an
55 instrument purporting to convey certain lands in controversy, from one Avelino Sauri to the plaintiff, the same being marke Exhibit "C" for the plaintiff.

VII.

The court erred in admitting in evidence, over the objection and exception of defendants, a certain document purporting to be a conveyance of land executed on November 3, 1857, from Gotay to one Monserrate Garcia and Avelino Sauri, the same being marked Exhibit "D" for the plaintiff.

VIII.

The court erred in admitting in evidence a certain document purporting to be a private agreement of sale of certain lands, from Manuel Flores to the plaintiff, over the objection of the defendants, the same being marked Exhibit "E" for the plaintiff.

IX.

The court erred in admitting in evidence a certain private document purporting to show the conveyance of certain lands, from one Avelino Rexach to the plaintiff, over the objection of defendants, the same being marked Exhibit "F" for the plaintiff. And, further, the court erred in said ruling in holding that a legal document of conveyance may be executed in Porto Rico without the personal presence and signature of both of the contracting parties thereto.

X.

The court erred in receiving in evidence, over the objection of the defendants, an instrument purporting to be a private con-
56 tract of sale from Josefa Quiñones to the said plaintiff of certain lands, whereas the said instrument does not purport to have been signed by the grantor named therein, the same being admitted in evidence and marked plaintiff's Exhibit "G".

XI.

The court erred in admitting in evidence, over the objection and exception of defendants, certain deeds purporting to show the transfer of various tracts of land to one Monserrate Garcia, which said lands, according to the admission of plaintiff's counsel, did not constitute or form any part of the property known as "Bello Sitio" Exhibits "K" and "L".

XII.

The court erred in overruling the motion of defendants' counsel to strike out the answer of the plaintiff, as a witness in his own behalf, to the following question:

"Q. When you took charge of the Hacienda Bello Sitio in 1874 as administrator of Mr. Monserrate Garcia, did any part of the 249½ acres of the "Eastancia Sauri" form part of the Bello Sitio?"

XIII.

The court erred in permitting the plaintiff, as a witness in his own behalf and over the objection and exception of defendants, to testify to the effect that any person other than the defendants were in the possession of the premises in controversy after the year 1891, the same being in direct contradiction of the allegations of the plaintiff's complaint.

57

XIV.

The court erred in overruling the motion presented by counsel for defendants, at the conclusion of the testimony of plaintiff in the trial of said cause, to take the case from the jury or to direct that the jury should return a verdict in favor of the defendants therein, the said motion being set forth at length in the transcript of the record and to the overruling of which motion counsel for defendants duly excepted.

XV.

The court erred in refusing to receive in evidence, on behalf of the defendants, a certified copy from the office of the registrar of property of Humacao, showing the boundaries of the property Bello Sitio from the first to the last inscription thereof, the said document being duly set forth in the transcript of the record herein.

XVI.

The court erred in refusing to receive in evidence when presented on behalf of the defendants, a certificate showing the date of the marriage of the plaintiff, to which refusal of the court defendants then and there duly excepted.

XVII.

The court erred in permitting the witness Julio Esparolin and testifying on behalf of plaintiff, to give evidence of certain conversations between the said witness and one Gabriel Arruza concerning the custody of the lands known as Bello Sitio out of the presence or hearing of any of the defendants or any representative of such defendants.

58 The court erred in giving the following instruction, during the course of the charge to the jury, to-wit:

"You are further instructed that in determining this fact you may look to the description the plaintiff put in his mortgage, and to all documents or papers to which that mortgage referred, that are in evidence before you, and consider all the surrounding facts as to the situation of the property and the parties at the time.

If you find from a preponderance of the evidence that the plaintiff did not include the whole or any of the tracts of land he is now suing for, in his mortgage, and that the widow Véve knew that he did not so include the same, or ought to have known it, and that she in fact received in the mortgage all the land mentioned therein, then the plaintiff is entitled to recover that land or such portion thereof in this suit as you may believe from a preponderance of the evidence was not so included in plaintiff's mortgage, together with damages for the taking of any property therefrom, and the rental value thereof to the date of your verdict."

XIX.

That the court erred in giving to the jury the following instruction, during the course of its charge, to-wit:

"You are instructed that the parties to a mortgage or conveyance are bound by the recitals thereof, the seller as much as the buyer, the mortgagor as much as the mortgagee, but if there is ambiguity in the description of the land as to what it includes or does not include, then you may resort to all the evidence in the case to determine what the parties understood or intended should be included in, or excluded from such conveyance or mortgage."

XX.

The court erred in giving to the jury the following instruction, during the course of its charge:

"You are instructed that if you believe from a preponderance of the evidence that when plaintiff made the mortgage to the widow Véve, he was then in possession of a tract of land he had purchased from one Monserrate Garcia and that said tract then contained four hundred cuerdas of land, then you must find, under
59 the language of the descriptive clause of the mortgage, that he did not convey to her any of the tracts he now sues for, and it will make no difference that others may have appropriated portions of that four hundred cuerdas thereafter during the turmoil and litigation that took place in after years, if you shall so believe; because having been in possession of that land at the date of the mortgage, he would not be required to make it up later, as he had fulfilled his contract once, nor would any shortage occurring at the foreclosure justify any court or any marshal or sheriff in putting the purchaser at the foreclosure in possession of any other lands of the plaintiff not included in his mortgage to the widow Véve."

XXI.

The court erred in giving to the jury, in the course of its charge, the following instruction:

"But you are further instructed that if he had the four hundred cuerdas when he made the mortgage and adjoining owners appropriated portions of it after he was deprived of possession of it, and before or after the widow Véve or her heirs got it on execution sale, then plaintiff cannot be held here in this sort of a suit to make up the required number of cuerdas a second time; because if the widow Véve's mortgage covered four hundred cuerdas of land when made, that plaintiff then had outside of what he now sues for, she had the right to follow that mortgaged land against all trespassers, and the plaintiff is relieved and she could not permit trespassers to keep or to since take it from her and then endeavor to take other land of plaintiff in lieu thereof.

XXII.

The court erred in overruling defendants' motion to set aside the verdict of the jury in said cause, and to grant to defendants a new trial.

XXIII.

The court erred in overruling defendants' motion to set aside the verdict and to enter a judgment for the defendants on the pleadings and proofs in said cause.

60 XXIV.

The court erred in refusing to sustain the defendants' plea, as set forth in the motion to dismiss the said cause and in the motion for judgment on the pleadings and proof, that the said matters and things involved in said action were *res judicata*, by reason of the

various proceedings had in the former Spanish and present Insular courts of Porto Rico; wherein and whereby the identical matters and things litigated in this action had been fully passed upon and determined by said Spanish and Insular courts certified copies of the said records and proceedings being introduced in evidence in this action in support of said plea.

XXV.

The court erred in overruling defendants' contention, as set forth in the motion for non-suit and in the motion to dismiss the said cause, that the declarative suit which had been prosecuted by the same plaintiff against the same parties after the foregoing proceedings of the land in controversy had been concluded, was not a full and complete determination of the matters and things involved in this action and, therefore, a complete bar to this present suit.

XXVI.

The court erred in holding that the final decision of the Supreme Court of Porto Rico of the so-called *certiorari* proceedings, in which proceedings the parties to this present action were likewise interested, was not a final determination of the identical matters involved in this present suit, the said decision of the Supreme Court of Porto Rico being a part of the records presented and received in evidence herein.

61

XXVII.

The court erred in holding and determining that the order of the Honorable Judge del Toro of the District Court of San Juan was not a final determination of the identity of the premises belonging to the defendants in this action, and in refusing to hold that the said order and judgment of the said District Court of San Juan was not a final determination of the matters involved in this action, a certified copy of the said order of the said District Court being a part of the record herein.

XXVIII.

The court erred in permitting the plaintiff, over the objection and exception of the defendants, to introduce in evidence and have considered by the jury certain private agreements and contracts for the sale and transfer of lands, and certain unregistered deeds, for the purpose of attempting thereby to affect or destroy the validity or force of the registered title of the defendants to the premises in controversy.

XXIX.

That it having appeared in the evidence that the defendants' title to the premises in controversy was evidenced by a duly registered deed executed and registered in the year 1891, the court erred in permitting the said cause to be submitted to the jury upon evidence based upon deeds subsequent in date, and a part of which alleged instruments were only private agreements and unregistered.

62

XXX.

The court erred in permitting evidence to go to the jury and in permitting the jury by its verdict to find that the plaintiff was entitled to the possession of certain lands, which were so situated as to divide the premises known as Bello Sitio and which is the property of the defendants, into two separate and distinct tracts of land; whereas the description of said premises, as contained in the mortgage from plaintiff to the widow Véve and in the judicial deed from the court of Humacao to the said widow Véve upon the foreclosure of said mortgage contained the description of a single entire tract of land, and that the said plaintiff, as the grantor in said mortgage, was estopped from asserting claim of title to any lands lying within the boundaries or description contained in said mortgage.

XXXI.

The court erred in permitting evidence to go to the jury in said cause which would vary or alter the description and boundary lines of the property Bello Sitio, as contained in the mortgage thereof which was a basis of the defendants' title, and in permitting any claim of the plaintiff to be considered by the jury, the effect of which would be to divide or separate the premises known as Bello Sitio, into separate tracts of land introducing new boundary lines into the said description.

XXXII.

The court erred in permitting the jury to consider for any purpose in said cause, the alleged transfer from Avelino Sauri to the plaintiff of the lands in controversy; for the reason that,
63 as appears from the evidence, the same contained a description entirely different from that which was contained in the original deed purporting to convey the same premises from one Gotay to the said Sauri and Monserrate Garcia.

XXXIII.

The court erred in permitting the jury to find that the plaintiff was entitled to the possession of a definite one-half of the lands described in the deed from Gotay to Avelino Sauri and Monserrate Garcia, there having been no evidence introduced of any legal division or segregation of said lands, and the deed from Gotay being a deed conveying the said premises in a single tract.

XXXIV.

The description of the premises Bello Sitio, as contained in the mortgage executed by the plaintiff to the ancestor of the defendants being a plain and unambiguous description of a single tract of land, with boundaries and adjoining owners fully described therein, and it appearing from the evidence that the identical boundaries still exist and that the defendants are in the possession of only those lands which are described in the mortgage, the court erred in permitting the said cause to go to the jury for any purpose whatsoever.

XXXV.

The court erred in permitting the jury to return a verdict in said cause, by the terms of which the single tract of land, as described in the mortgage, should be so divided as to create two entire separate and distinct portions and under the ownership of a person
64 not named a*n* a*s* adjoining owner in the description contained in the mortgage.

XXXVI.

That the verdict of the jury assessing damages in the sum of Four Thousand Dollars ($4,000) is entirely excessive and unsupported by any evidence in the cause, the court distinctly ruling that the amount of damages which could be recovered should be limited to the fair rental value of the premises in controversy for the period of one year prior to the institution of this action.

Wherefore, the said defendants, plaintiffs in error, pray that the judgment of the United States District Court for Porto Rico be reversed, set aside and held for naught, and that said District Court be directed to take such further action in the premises as may be just.

H. S. BELAVAL,
HARTZELL & RODRIGUEZ SERRA,
JOSÉ DE GUZMAN BENITEZ,
Attorneys for Plaintiffs in Error, Defendants in Lower Court.

65 (*Order. Filed February* 18, 1910.)

Law. No. 480.

JOSÉ AVALO SANCHEZ, Plaintiff,
vs.
CONCEPCIÓN VÉVE Y DIAZ, JOSÉ SASTRAÑO BELAVAL, Her Husband; Josefina Porrata Doria, Julio Ferrer Torres, Her Husband; Celina Porrata Doria y Véve, Albertina Porrata Doria y Véve, Luz Porrata Doria y Véve, a Minor; Raquel Porrata Doria y Véve, a Minor, the Two Latter Being Represented by Their Father, Miguel Porrata Doria; Maria Porrata Doria y Véve, Guillermo Oppenheimer, Her Husband; Josefa Véve y Diaz, Frisco Vizcarrondo, Her Husband; Clotilde Véve y Diaz, Widow, and José Sastraño Belaval and Miguel Porrata Doria, Individually, Defendants.

The defendants having this day filed their petition for a writ of error from the decision and judgment thereon made and entered herein, to the Supreme Court of the United States at Washington, in the District of Columbia, together with an assignment of errors, within due time, and also praying that an order be made fixing the amount of security which defendants should give and furnish upon said writ of error; and that upon the giving of said security all

further proceedings in this court be suspended ans stayed until the determination of said writ of error by the said the Supreme Court of the United States, and said petition having this day been allowed:

Now, therefore, it is ordered, that upon the said defendants filing with the clerk of this court a good and sufficient bond in the sum of twenty thousand dollars ($20,000), to the effect, that if the said defendants and plaintiffs in error shall prosecute the said
66 writ of error to effect, and answer all damages and costs, if they fail to make their plea good, then the said obligation to be void; else to remain in full force and virtue, the said bond to be approved by the court that all further proceedings in this court be, and they are hereby suspended and stayed until the determination of said writ or error by the said Supreme Court of the United States.

Dated, Feb'y 18, 1910.

B. S. RODEY, *Judge.*

(*Journal Entry, Feb.* 21, 1910.)

Law. 480.

José Avalo Sanchez
vs.
Concepción Veve et al.

Come now counsel for the appellants and present a supersedeas bond on appeal as provided for in the Court's order entered of record in this cause under date of the 18th instant, and it appearing that said bond is sufficient in substance and form, and counsel for the plaintiff having seen and examined the same and offering no objection thereto, it is duly received, signed and approved, and ordered to be filed by the Court.

67 (*Supersedeas Bond. Filed Feb.* 21, 1910.)

Law. No. 480.

José Avalo Sanchez, Plaintiff,
vs.
Concepción Véve y Diaz, José Sastraño Belaval, Her Husband; Josefina Porrata Doria, Julio Ferrer Torres, Her Husband; Celina Porrata Doria y Véve, Albertina Porrata Doria y Véve, Luz Porrata Doria y Véve, a Minor; Raquel Porrata Doria y Véve, a Minor, the Two Latter Being Represented by Their Father, Miguel Porata Doria; Maria Porrata Doria y Véve, Guillermo Oppenheimer, Her Husband; Clotilde Véve y Diaz, Widow; Josefa Véve y Diaz, Prisco Vizcarrondo, er Husband, and José Sastraño Belaval and Miguel Porrata Doria, Individually, Defendants.

Know all men by these presents, that we, Concepción Véve y Diaz, Jose Sastraño Belaval her husband, Maria Porrata Doria y

Véve, Guillermo Oppenheimer her Husband, Josefa Véve y Diaz, Prisco Vizcarrondo her Husband, Clotilde Véve y Diaz, widow, and José Sastraño Belaval individually, Josefina Porrata Diaz, Julio Ferrer Torres, Celina Porrata Doria y Veve, Albertina Porrata Doria y Veve, Luz Porrata y Veve, a minor Raquel Porrata Doria y Veve, a minor, the two latter being represented by their father Miguel Porrata Doria, and Miguel Porrata, Doria, individually, as principals, and Santiago Véve y Calzada and Luis M. Cintron, as sureties, are held and firmly bound unto José Avalo Sanchez, plaintiff above-named, in the sum of twenty thousand dollars ($20,000), to be paid to the said Avalo Sanchez, his executors or administrators, to which payment well and truly to be made, we bind
68 ourselves and each of us, jointly and severally and our and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated the 21st day of February 1910.

Whereas, the above-named defendants Concepción Véve y Diaz, José Sastraño Belaval her husband, Josefina Porrata Doria, Julio Ferrer Torres her husband, Celina Porrata Doria y Véve, Albertina Porrata Doria y Véve, Luz Porrata Doria y Véve a minor, Raquel Porrata Doria y Véve a minor, the two latter being represented by their father Miguel Porrata Doria, Maria Porrata Doria y Véve, Guillermo Oppenheimer her husband, Josefa Véve y Diaz, Prisco Vizcarrondo her husband Clotilde Véve y Diaz, widow, and José Sastraño Belaval and Miguel Porrata Doria individually, have sued out a writ of error to the United States Supreme Court, to reverse the judgment in the above-entitled cause by the United States District Court for Porto Rico.

Now, therefore, the condition of this obligation is such that if the above-named defendants shall prosecute said writ to effect and answer all costs and damages, if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Concepción Veve y Diaz, José Sastraño Belaval, José Sastraño Belaval individually, Josefina Veve y Diaz, Prisco E. Vizcarrondo, Clotilde Veve y Diaz, Guillermo Oppenheimer, Maria de Porrata-Doria, Miguel Porrata-Doria, Luz Porrata Doria y Veve, Raquel Porrata Doria y Veve, Miguel Porrata Doria guardian ad litem for Luz y Raquel Porrata Doria y Veve, Josefina Porrata Doria,
69 Albertina Porrata Doria y Veve, Julio Ferrer Torres, Celina Porrata Doria y Veve.

LUIS MANUEL CINTRON, *Surety.*

SANTIAGO VÉVE, *Surety.*

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Santiago Veve y Calzada and Luis M. Cintrón sureties, make oath according to law depose and say: that they are the sureties named in the above-mentioned bond, and that they are worth the sum of twenty thousand dollars ($20,000) in visible property, subject to

execution in Porto Rico and that they are worth said sum over and above their indebtedness.

SANTIAGO VÉVE,
LUIS MANUEL CINTRON,
Sureties.

Sworn to and subscribed before me this 21st day of February, A. D. 1910.

[Seal of U. S. Dist. Court for P. R.]

JOHN L. GAY,
Clerk of the District Court of the United States for Porto Rico.

I, John L. Gay, Clerk of the U. S. District Court for the District of Porto Rico, hereby certify that: Concepción Veve y Diaz, José Sastraño Belaval, José Sastraño Belaval individually, Josefina Veve y Diaz, Prisco E. Vizcarrondo, Clotilde Veve y Diaz, and Guillermo Oppenheimer, whose signature- appear above, signed same in my presence under oath, on this the 21st day of February, A. D. 1910.

[Seal of U. S. District Court for P. R.]

JOHN L. GAY,
Clerk of the District Court of the United States for Porto Rico.

70 I, John L. Gay, Clerk of the U. S. District Court for the District of Porto Rico, hereby certify that: Miguel Porrata Doria, Luz Porrata Doria y Veve, Raquel Porrata Doria y Veve, Miguel Porrata Doria as guardian ad litem for Luz and Raquel Porrata Doria y Veve, Josefina Porrata Doria, Albertina Porrata Doria y Veve, Julio Ferrer Torres, Celina Porrata Doria y Veve, whose signatures appear above, signed same under oath in my presence on this 21st day of February, 1910, at Ponce, P. R.

JOHN L. GAY,
Clerk U. S. District Court of Porto Rico.
By A. AGUAYO,
Deputy Clerk.

The foregoing bond is this 21st day of Feb'y, 1910, approved as to substance and form and ordered to be accepted and filed.

B. S. RODEY, *Judge.*

(Journal Entry, March 8, 1910.)

Law. 480.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCIÓN VEVE et al.

Order.

It appearing that an order was entered under date of February 18, 1910, granting a writ of error in this cause, and fixing supersedeas in the sum of twenty thousand dollars ($20,000), and:

It further appearing that said bond has been duly presented, approved and filed under date February 21, 1910, therefore the
71 Court, on this date, upon the request of counsel for the appellants, duly signs the writ of error and the citation in the premises and orders that the record in the cause be prepared and transmitted in due course of law to the Honorable the Supreme Court of the United States.

B. S. RODEY, *Judge.*

March 8, 1910.

72 Journal Entry, April 16, 1910.

480. Law.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCIÓN VEVE et al.

Comes now Manuel Rodriguez Serra of counsel for the appellants and presents a bill of exceptions in this cause. And the Court thereupon examines, signs and approves the said bill of exceptions and directs that same be filed and that it be made a part of the transcript on appeal now being prepared in this cause. Henry F. Hord of counsel for appellee is present and objects to the signing of said bill of exceptions as insufficient in form and the objection being overruled, he then and there duly excepts.

73 In the District Court of the United States for Porto Rico.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCION VEVE et al.

Bill of Exceptions.

Be it remembered, that on the 7th day of December, 1909, at the October, 1909, term of this court, the above entitled cause came on for trial before the above court and a jury duly empanelled.

Honorable B. S. Rodey presiding.

The plaintiff appeared by Messrs. Hord & Scoville, his counsel, and the defendants appeared by Messrs. Hartzell & Rodriguez, José A. Poventud, H. S. Belaval and J. Guzman Benitez, their counsel, and the following proceedings were had and testimony taken.

The hereinafter transcript which is made part of this bill of exceptions constitutes the testimony and statements of all the evidence introduced and offered upon the trial of this cause, with the rulings and exceptions thereto; instructions to the jury and exceptions thereto and request for instructions, refusal on the part of the Court to grant same and exceptions thereto, with the motion of the defendants for a direction of verdict at the close of the plaintiff's case, order overruling same, renewal of said motion at the close of the whole evidence, order overruling same, to which said ruling of the Court, counsel for the defendants then and there duly excepted.

74 In the District Court of the United States for Porto Rico.

JOSE AVALO SANCHEZ
versus
CONCEPCION VEVE et al.

Tried at the October Term, A. D. 1909.

TRANSCRIPT OF TESTIMONY.

75 *Index of Witnesses.*

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76 In the District Court of the United States for Porto Rico, San Juan.

Law. No. 480.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCION VEVE et al.

Transcript of Testimony.

DECEMBER 7, 1909.

Mr. HARTZELL: We desire to present to Your Honor and to ask to be made a part of the record, a motion that the action be dismissed summarily on the ground that this court, from an inspection of the complaint and the proceedings, is without jurisdiction to proceed with the trial of this case. We base this motion on three or four separate propositions which I will enumerate. First. That from the amended complaint in this case it appears that the basis of this action and of the complaint which the plaintiff urges as his grounds of recovery, is that the premises in controversy were taken from the defendant in the year 1891 by means of certain false and fraudulent claims instituted and prosecuted before the courts of Porto Rico and with the wrongful possession of which this plaintiff complains, and he
77 bases his grounds for recovery upon the fact that after the wrongful possession had been taken from him by virtue of these wrongful and fraudulent proceedings through the courts of Spain, that this wrongful usurpation and possession were continued, and are still being continued by reason of the same wrongful and fraudulent proceedings waged by them in the Spanish and afterwards in the insular courts of Porto Rico. That if the proceedings complained of in this cause are the identical proceedings as are covered by the equity suit which has already been disposed of by this court and upon which the opinion of the court is already published in a volume of the reports of this court, that then and in that event the matters involved in this hearing are res adjudicata and have been already determined and passed upon by this court necessarily in passing upon those proceedings, and it has been there determined by this court that this court is without power to inquire into, correct or modify its proceedings in accordance with the doctrine laid down in the Cesna case. Further, if these proceedings are not, that is, if the wrongful and fraudulent proceedings upon which this action is based, are not the identical proceedings upon which the equity suit covering these same matters was prosecuted in this court, that then and in that event the complaint should be dismissed for the reason that
78 this court has not appellate jurisdiction of the proceedings which have been waged between these identical parties in the insular courts of this island and having reference to the same matters and proceedings, and it has been settled by the Spanish courts that any other court would be without jurisdiction to decide the matters

that have been there litigated and disposed of. Again, we ask the dismissal of this case upon the following doctrine as established by the Spanish jurisprudence, that it appears from the face of the complaint in this case that these defendants are in possession of this property by a title of some character more or less firm,—that is the language used in the Spanish jurisprudence—have been put into possession by certain judicial acts of the courts of Spain, and that under the doctrine and proceedings of the Supreme Court of Spain, and following out the provisions of the law of mortgages and the regulation of that law that an action at law does not lie to recover the possession of these premises until there has first been an action equitable in its character to clear a cloud from the plaintiff's title, enabling him to show that he has a better title than the one under which the
79 parties hold, that being a necessary prerequisite to this action at law to recover the possession of the property. In other words, that this action must be an action in equity rather than an action at law, and on that we will ask Your Honor to listen to several decisions from the Supreme Court of Spain. And finally, we ask to dismiss this case on the ground that this proceeding is a collateral attack pure and simple on actions which have been taken by other courts, and that under the doctrine which was maintained by Your Honor in the Elias Santiago cases and which has been confirmed very recently by the Supreme Court of the United States, that the question of the proceedings of the courts which are attacked cannot be litigated because of its being in the nature of a collateral proceeding. That is a statement of the grounds upon which we base our motion, and I will ask Your Honor's indulgence to present my ideas and those of my associates upon these points.

This motion was thereupon argued at some length by counsel for both parties until the adjournment hour when court was adjourned until 9:30 a. m., December 8, 1909.

80 DECEMBER 8, 1909.

The COURT: With reference to the motion made on yesterday evening and argued at length for a dismissal of the above entitled cause, the Court is constrained to overrule the motion and it is constrained to notify counsel that after due consideration and an extensive examination made last night, it holds that the complaint while peculiar, is necessarily so under the circumstances of this case, and will regard and treat the complaint from beginning to end as a plain declaration in ejectment, and announces that it feels that this case must be tried and won or lost on the merits.

Mr. HARTZELL: In view of Your Honor's announcement that the action will be treated as an action in ejectment, I desire to ask leave to insert in the record a plea of prescription under the statutes of Porto Rico, and to have that noted in the record that counsel, in view of the announcement by the Court that this case will be tried and treated as a case in ejectment, invoke the law of prescription which is ten years where a person is present.

Mr. POVENTUD: We join in that for our clients in addition to the special plea in our answer.

The COURT: I presume the other side traverses that.

Mr. HORD: Yes, we desire to note in the record that we do traverse the plea in the record as to both parties.

81 The COURT: The pleas as just interposed of the statute of limitations will be considered as traversed, both being oral, and the issue thus raised, but this is no announcement on the part of the Court that it will not entertain a motion for a verdict at the proper time if the proofs shall show that the statute of limitations has in fact intervened.

Mr. POVENTUD: I would like to invoke also the special prescription of six years by the general military orders.

The COURT: Your plea of the statute of limitations also included that.

Mr. POVENTUD: Before proceeding with the trial I would like to make a motion to the Court with reference to certain portions of the complaint which should be stricken out.

The COURT: You are too late now. You have had two years to do that.

Mr. HORD: May I complete the record as I understand it should be? Under the code of civil procedure we are required to deny the prescription and we now ask that the pleas be denied. We deny them of record.

The COURT: Your words are taken there. That will be sufficient.

Mr. HORD: Your Honor said: Considered as traversed. The record should show that we affirmatively deny them or traverse them.

The COURT: It is the action of counsel here in open court and taken just to save the formality of filing written pleadings at this moment.

82 Mr. HORD: I simply want it to appear that we take affirmative action in denying them.

Mr. HARTZELL: We take an exception to Your Honor's ruling.

Mr. POVENTUD: I would like to move for an order striking out all that part of the complaint wherein they claim damages from the defendants, on the ground that these damages are too remote and speculative. Secondly: it appears from the complaint that if we came into possession of those premises at all, it was under and by virtue of those several supposed fraudulent proceedings in the Spanish courts.

Mr. HORD: I rise to a question of privilege and ask to have the jury retire from the court if counsel is going to make an argument here.

The jury retires.

The COURT: Mr. Poventud, you are too late with this motion at this time, but that does not indicate but what I have had the same idea that you are setting forth and I may entertain a motion at a later point in the trial, or an instruction.

Mr. HARTZELL: We have a right to get all these motions in the record.

The COURT: The Court has a right to keep counsel from detaining the court here at the eleventh hour.

Mr. POVENTUD: We made this motion the last time but we were

not so well prepared as we are now and I think I can convince the Court of that point.

83 The COURT: Well, we will see whether you can.

Mr. Poventud then continued his argument upon the motion at some length.

The COURT: That would be quite proper when the proofs show that to be a fact. I have gone into this thing so thoroughly that I entirely disagree with defendants here that this Court is interfering with anything that any other court ever did connected with this particular issue. This man asserts here that you took his property when you were allowed to take another piece. I have dismissed his suit on the equity side when he tried to set aside that proceeding where the widow of Veve foreclosed the mortgage and got the land known as Bello Sitio, and he made all sorts of efforts to get that back. As to this other independent piece of land that he claims title to from another entirely different source, I hold that it lies with the jury to say whether you have any right to it.

Mr. POVENTUD: My motion is only to strike that part of the complaint wherein damages are claimed from the defendants. They claim sixty thousand dollars damages. I don't refer now to the land.

The COURT: I will hear you on that. I have some doubt about that. This man seventeen years ago brought a suit and arrested somebody for taking the crops off of this particular piece of land. Now that goes to the jury. He contends that the writ did not authorize it; that the decree did not authorize it and he contends

84 that you did not take it in good faith and I think that is a question for the jury. But I may have to take that question away from the jury.

Mr. POVENTUD: Is the jury to become the judges of that judgment of the Court?

The COURT: No, I will instruct them on that.

Mr. POVENTUD: I want to read to Your Honor Sec. 1833 of the code of civil procedure of Porto Rico, which is as follows: Rights and action shall extinguish by prescription to the prejudice of all kinds of persons, including judicial persons, in the terms prescribed by law. Persons incapacitated to administer their property shall always retain the right to sue their legal representatives whose negligence may have been the cause of the prescription.

The COURT: You claim that he could have sued when?

Mr. POVENTUD: From 1891, the time that he knew that he was deprived of those premises.

Considerable further argument is had on this question by Messrs. Hartzell and Hord.

The COURT: I will hold that if you are entitled to this land you are entitled to damages for its wrongful detention. I say if no statute has run to the land, no statute has run to the damages. It may not be for crops but for damages.

Mr. HARTZELL: Counsel for defendant- moves to eliminate

85 from the complaint and from any evidence to be introduced in the cause, any reference to the allegations claiming damages

for the detention of this land from the year 1891 to the present date for the reason that under the statutes of Porto Rico, actions for damages of this character are barred after the lapse of one year's time, and that in the present action it appears that the suit is brought for a continuing series of years, and there is no explanation in the bill of complaint, it appearing from the face of the complaint that during all of this time the said plaintiff could have brought this action. The Court overrules the said motion, to which counsel for all the defendants then and there duly except.

The COURT: The Court overrules the motion because it appears in this cause that the title to the land being controverted, it emanates from two distinct and different fountain heads and it becomes a question of identity of land, and because plaintiff's counsel allege they will prove, as the Court saw they had evidence for in the last trial, that there has been a continual contention between the parties for this land, and because it further appears that the plaintiff alleges that he was under disability during all these years up to the time of the filing of this suit and could not personally bring his action.

86 Mr. Hord asks permission of the Court to examine the clerk of the district court of Humacao out of order in order that he may return. The witness Jesus L. Pereyo is brought into the court room, when it is determined that he is not needed by counsel for the plaintiff because counsel for the defendants all agree that the certified copies which counsel for the plaintiff states that he has of the court records are sufficient.

Mr. Poventud thereupon announced that he wished to ask the witness some questions and he is granted permission to examine him out of order.

JESUS L. PEREYO being called as a witness in behalf of the defendants, is duly sworn and testifies as follows:

Direct examination by Mr. POVENTUD:

Interpreted.

Q. What is the name of the witness?
A. Jesus L. Pereyo.
Q. What is your position now?
A. Secretary for the district court of Humacao.
Q. Did Mr. Avalo Sanchez ask a certified copy of any record from your court?

Mr. HORD: I shall ask the Court to require counsel not to ask leading questions.

The question was read by the Stenographer at the request of the Court.

The COURT: It is not very leading. He may answer that.

A. I don't remember.
Q. Have you made any search to find any record in the district court of Humacao to bring for this suit?

87 A. I don't know whether it is for this suit but I have made several searches.

Q. For what records are those which you have made those searches?

A. Several.

Q. Give the names of the parties.

A. There are a great number of them. I search papers daily there, every day.

Q. Any one in which the name of Avalo Sanchez appears?

A. One requested by Mr. Belaval.

Mr. POVENTUD: That is all.

Mr. HORD: I wish to ask the witness a question in cross-examination.

The COURT: He has brought out nothing.

Mr. HORD: Then I ask to have it stricken out.

Mr. HARTZELL: He brought out the question of the search made for a document for Mr. Belaval.

The COURT: Yes, that is so. You may cross examine on that.

Cross-examination by Mr. HORD:

Q. What paper was that? Let us find out what it was.

A. It probably is one that they asked for. The people are asking for papers there every day.

Q. Well what paper was it that Mr. Belaval asked you to look for?

A. Not Mr. Belaval, his agent Mr. Carreras.

Q. Well, what was it?

A. A criminal proceeding instituted for stealing cane.

Q. Against whom?

A. Against Juan Vaamonde and others.

88 Q. Juan Vaamonde Lopez?

A. Juan Vaamonde Lopez.

Q. Did anybody else ever ask you to look for those papers?

A. Mr. Belaval; I don't remember of anybody else.

Q. Were those papers there?

A. No, sir.

Q. Had they ever been there?

Mr. HARTZELL: Hold on; if he knows. Ask him first if he knows.

The COURT: Yes.

A. Yes, they were on file before.

Q. You have been clerk twice haven't you?

A. Yes, sir.

Q. And were they or not there the first time you were clerk?

A. I cannot remember whether they were there the first time that I was secretary. It is an archive and I cannot state all the papers that were there.

Q. You said ust now that they were there. When were they there then?

A. In July, 1904, I was clerk and at that time I remember that they were there.

Q. You are sure that they were there in 1904 are you?

A. I think so, yes.

Q. And they are not there now?
A. No, sir; there are not now there.
Q. Do you know what became of the records?
A. No, sir; they were not turned over to me by the new secretary or new clerk.

Mr. HORD: That is all.

89 Redirect examination by Mr. POVENTUD:

Q. What were you asked by plaintiff to bring to this court?

Mr. HORD: That is not re-direct examination.
The COURT: No, it is not re-direct.
Mr. POVENTUD: Certainly, he has been asking about that record. Suppose it is not re-direct, can't I supply that now?
Mr. HORD: Yes, but I will have a right to cross-examine on it.

Q. What were you asked by these plaintiffs to bring to this court?
A. Which plaintiffs?
Q. Mr. Avalo Sanchez or Judge Hord.
A. None at all.
Q. And the subpœna which you received from this court, what did it require you to bring?
A. Nothing; Mr. Hord asked me to appear here as a witness.

Mr. POVENTUD: That is all.

Witness retires.

90 JOSÉ S. BELAVAL being called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct examination by Mr. HORD:

Interpreted.

Q. Did you know Mr. Eduardo Rivera y Siaca?
A. Yes, sir.
Q. What relation was he to your wife, if any?
A. A very far relationship; I don't remember; somewhat far relationship.
Q. Is he alive or dead?
A. I think he died.
Q. Where did he live when he was alive?
A. In Fajardo.
Q. He was a relation of Mrs. Maria Diaz y Siaca, was he not?
A. Yes, sir.
Q. Now, Don Domingo Rivera y Siaca, did you know him?
A. Yes, sir; if he is the brother of Eduardo, yes.
Q. He was also a relation of Mrs. Maria Diaz y Siaca?
A. Yes, sir.
Q. Is he alive or dead?
A. I am not sure; I think he is dead.
Q. Don Benigno de Santiago y Ojeda, did you know him?
A. I knew him very well.

Q. Where did he live?
A. In Fajardo.
Q. Is he alive or dead?
A. He died.

Q. Don Gabriel Arruza y Echevarria, did you know him?
91 A. No, sir.
Q. You don't know whether he is alive or dead then?
A. No, sir.
Q. Doña Maria Diaz y Siaca, you knew her did you not?
A. Yes, sir.
Q. She was your mother-in-law was she not?
A. Yes, sir.
Q. She is dead is she not?
A. Yes, sir.
Q. In what year did she die, more or less?
A. I am not sure whether she died in 1906 or 1907.

The COURT:

Q. A couple of years ago, or three?
A. Two or three years ago.
Mr. HORD: I think it is longer.
A. Perhaps it is longer.
Q. Not exactly, but more or less.
A. Perhaps four years.
Q. Don Rosendo Bas y Feijo, did you know him?
A. Yes, sir.
Q. Where did he live?
A. In Fajardo also.
Q. Is he alive or dead?
A. He died.
Q. Don Domingo Cerra y Gonzales, did you know him?
A. Yes, sir.
Q. Where did he live?
A. Also in Fajardo.
Q. Is he alive or dead?

—. ——.

92 Q. Don Carmelo Martinez, did you know him?
A. Yes, sir.
Q. Where did he live?
A. He lived first in Humacao and afterwards in Ponce.
Q. Is he alive or dead?
A. He died.
Q. And Don Juan Vaamonde Lopez.
A. Yes, sir; he was my brother-in-law.
Q. And son-in-law of Doña Maria Diaz y Siaca?
A. Yes, sir.
Q. Is he alive or dead?
A. He died.

Mr. HORD: I think that is all I have to ask him.
Mr. HARTZELL: No questions.

Witness retires.

93 José Avalo Sanchez being called as a witness in his own behalf, was duly sworn and testified as follows:

Direct examination by Mr. Hord:

Interpreted.

Q. What is your name?
A. José Avalo Sanchez.
Q. You are the plaintiff in this case are you not?
A. Yes, sir.
Q. Did you know Don Gabriel Arruza y Echevarria?
A. I did.
Q. Where did he live?
A. In Fajardo.
Q. Is he alive or dead?
A. He died.
Q. And Don Domingo Rivera y Siaca, did you know him?
A. Yes, sir.
Q. Is he alive or dead?
A. He died.
Q. And Don Eduardo Rivera y Siaca.
A. His brother.
Q. Is he dead too?
A. Yes, he also died.
Q. Did you know Don Andres Avelino Sauri?
A. Yes, sir.
Q. Where did he live when you first knew him?
A. He lived in Ciales. I think he was the mayor of that town.
Q. Is he alive or dead?
A. He died a short time ago.
Q. About how long ago, more or less?
94 A. Eighteen months ago in Caguas.
Q. (Handing a paper to the witness.) Please look at that. Look at the original. Without stating the contents of it, what is that?
A. That is a document of sale of 124¾ cuerdas of land.

The Court:

Q. From who to who?

Mr. Hord: I will offer it in a moment.

Mr. Hord:

Q. These signatures here (pointing to the document), José Avalo Sanchez and Avelino Sauri, whose are those?
A. This is mine and that is his (indicating).
Q. Do you know his signature?
A. Yes, sir; he was my brother-in-law.

Mr. Hord: We offer this in evidence.

The Court: Submit it to the gentlemen on the other side. He offers the instrument in evidence, gentlemen. Examine it and see whether you have any objection.

Mr. HARTZELL: If Your Honor please, we make a formal objection to it that it does not appear to be a recorded instrument. It appears to be a simple agreement and it can in no wise be used as a basis for an attack upon a registered title.

Mr. POVENTUD: I have to add some further objections.

The COURT: State them so that I may get them all in.

Mr. POVENTUD: Because further, under article 1247 of the civil code and three of the mortgage law and sentence of the Supreme Court of Spain dated the ninth of February, 1898, these private documents should be reduced to public deeds before they can
95 be offered in evidence to the prejudice of third parties who did not enter into the transaction between plaintiff and Sauri; and further, because the law in force at that time required that a public deed should be executed between the parties in the sale of real property or real rights, and because article 389 of the mortgage law now in force prohibits the admission of documents not inscribed in the registry.

The COURT: What have you to say to the objections as summarized, Judge Hord?

Mr. HORD: We say to Mr. Hartzell's objection that this is offered as a preliminary to the offering of the notarial conveyance from Sauri to Avalo, and only for the purpose of showing when this contract of sale was made; and as to the form of it we refer Your Honor to section 1353 of the civil code, which says, speaking of the contract of sale and purchase, title four, chapter one: The sale shall be perfected between vendor and vendee and shall be binding on both of them, if they have agreed upon the thing which is the object of the contract and upon the price, even when neither has been delivered. So it says that as between the parties it need not be a public instrument.

The COURT: Do you expect to show a registered deed finally for this land?

Mr. HORD: Yes, sir.

96 Mr. HORD: And further, in answer to Mr. Poventud, the rules of evidence made subsequent to 1906 are the rules for this court and they must take the place of the others. In this instance it is not necessary to offer a public instrument or one that is inscribed, because we are not attacking a registered title.

The COURT: I will rule with you with this reservation.

Mr. POVENTUD: I would like to say one more word before the Court decides that. As the mortgage law defines third persons, it save that it is one who did not intervene or take any part in the sale to which the document refers, and if this was a sale between Sauri and Avalo Sanchez, these defendants had nothing to do with it.

The COURT: I fully agree with you, Mr. Poventud, but that is not the idea. He is not attacking any registered title that you have, therefore whatever title he has, doesn't concern you very much. He has got to identify the land that you have not got title to, and he has got to recover on the strength of his own title.

Mr. POVENTUD: I want to read to Your Honor article 389 of the mortgage law, which is as follows:

No document or instrument which has not been recorded in the registry shall be admitted in the ordinary or special courts or tribunals, in the councils or offices of the government, by which interests subject to record are created, conveyed, acknowledged,
97 modified, or extinguished, according to the same law, if the object of the presentation be to enforce, to the prejudice of third persons, the interests which should have been recorded.

The COURT: Still I don't agree with you, if this is a preliminary title between this man and somebody that he bought this piece of land of. He can't make all of his case at once, and if he does not show a better title to this land than you have, the Court will instruct the jury to find for you. I can well see the object of section 389 of the mortgage law and it would not violate the ordinary rules of evidence. If during the trial this is not connected up, I will hold with you, but as preliminary he is entitled to put it in.

Mr. POVENTUD: I take an exception to that ruling.

The COURT: Read it to the jury. I assume that is an official translation.

Mr. Hord then read the document in question to the jury and the same was placed in evidence and marked: Exhibit A for the plaintiff. An English translation accompanies the document.

Q. (Handing the witness another paper.) What is that, Mr. Avalo?

A. This is a letter acknowledging receipt of the last instalment which I paid to Sauri.

Q. In connection with this purchase or not?

A. The last instalment of that purchase.

Mr. HARTZELL: Something was said a few minutes ago about leading questions.

The COURT: Yes, we must guard against them.

98 Mr. HORD: If I ask leading questions, I am always willing to have my attention called to it.

The COURT: Present it to the other side.

The document which was just identified by the witness was then handed to counsel for the defendants.

Mr. HARTZELL: This purports to be a receipt for the payment of a certain amount of money from Sauri to Sanchez. If, as Judge Hord stated, this transaction resulted in a public deed, then I submit that these matters are all immaterial.

The COURT: I almost agree with you, but from my knowledge of the case I can well see how he may want to present these instruments with a view to showing that the deed when he got it, was not a definite thing then and at that moment brought about and fixed but that he had this contract and bargain to purchase this thing ten years before.

Mr. HARTZELL: My objection is that it is incompetent, irrelevant and immaterial.

Mr. POVENTUD: And I object further for the same reasons that we set up to the previous document, and besides, that the signature of Avelino Sauri has not been acknowledged by anybody, and third,

because of the form of the document, which is composed of three or four pieces of paper stuck together on some alcaldia paper.

The COURT: Overruled. It is corroboratory proof of the fact only.

99 Mr. POVENTUD: Note an exception.

Mr. HORD: I will ask the witness a further question before offering it.

Q. (Handing the same document to the witness again.) Whose signature is that on there?

A. Avelino Sauri; it can be checked up with the other.

The COURT: Read it to the jury or state it to them.

The document was then placed in evidence and marked: Exhibit B for the plaintiff, and counsel read it to the jury.

Mr. HARTZELL: Now I move to strike all of that portion of the document except the bare receipt of the money.

The COURT: It is granted.

Mr. HARTZELL: With reference to bankruptcy proceedings and things of that kind, it is no way to prove them.

The COURT: Yes.

Q. (Handing another document to the witness.) What is that?

A. This is the deed executed by Avelino Sauri of the land which I bought of him, or the 124¾ cuerdas of land.

Mr. HORD: We offer that in evidence.

The document in question is handed to counsel for the defendants.

Mr. HARTZELL: I object to this, if Your Honor please, at this time because the description in it is entirely different from the description in the document already introduced in evidence, referring to entirely different boundaries. I call your attention to the fact that in the document of sale of the farm which Judge Hord

100 first introduced the boundary on the north was given as Convento, and in this one it also states on the north, in addition to Convento, the lands of Don José Avalo Sanchez and Doña Ysabel Siaca, and in the first document it stated that the boundaries on the east and west were the plantation "Bello Sitio" and Don José Avalo Sanchez, and on the south with Don Pascual Perez and the farm Aldea; and in the deed it appears that it was bounded on the south by Don Tomas Garcia, Jacinto y Nieves Perez; on the east by Don Manuel Camuñas, Rivera Hermanos and the Caño de la Ynea; on the west by Doña Concepcion Garcia, Don Gervasio Rivera and Avalo Sanchez. You remember both east and west were "Bello Sitio" in the first document.

The COURT: The boundaries may have changed. I am glad you pointed out that difference.

Mr. HARTZELL: The two pieces of land could not possibly be identified as the same and I move to strike out the first document as not being connected with anything in this case.

The COURT: He may connect it up.

Mr. POVENTUD: Defendants further object to the admission of

the deed of Avelino Sauri to Avalo Sanchez in the month of September, 1902, for the reasons: First. That Avelino Sauri states in that deed that he was married; it was executed in September,
101 1902, and at that time the law in force, the revised civil code of Porto Rico, provided that unless the wife signs the deed, it is null and void and produces absolutely no effect as against anybody.

The COURT: Is that all?

Mr. POVENTUD: No, one more. Secondly. Because it is therein in said deed stated that Avelino Sauri acquired those 124 cuerdas sold to Avalo Sanchez, by a division, material division, of a larger finca already owned by said Sauri and Monserrate Garcia, but nowhere in said deed appears, as it should, that said finca was duly and materially divided between the parties by a public document, as the law requires.

The COURT: Do the two owners join in this deed?

Mr. POVENTUD: No, sir; only one of them, and that is why we allege that objection, and the other owner, that is to say, Monserrate Garcia, did not sign. Third. Because, as counsel admits on the other side, said Avalo Sanchez in that year, 1902, was disabled and incapacitated to perform any judicial act or extra judicial act, such as to acquire lands being, as they contend, involved in bankruptcy proceedings, and therefore unable to acquire lands himself.

The COURT: What have you to say, Judge Hord?

Mr. POVENTUD: I would like to say something else. I can
102 argue those questions.

The COURT: No, I don't want to hear any argument. I want to hear from Judge Hord.

Mr. HORD: In so far as the question of the partition of land is concerned.

The COURT: No, answer first the objection of Mr. Hartzell in regard to the difference in the boundaries.

Mr. HORD: It is matter of connecting it up, and if I don't connect it up Your Honor may strike it out.

The COURT: You will show that it is the same land?

Mr. HORD: Yes, sir; I will show that it is the same land. Now in the first place as to the objection of Mr. Poventud that that document recites that there was a physical partition and that it does not exist by a public document. Your Honor is as familiar as I am and as all counsel are I take it, that even in the States where we have a statute of frauds which requires that the conveyance of real estate be made in writing in order to affect third persons, partitions of real estate if made upon the ground have all the effect that could possibly be given to them. This suit is not intended to attack Mrs. Veve's title to the four hundred cuerdas, so she is not a party in any sense to this contract between Sauri and Avalo Sanchez.

The COURT: I will overrule those objections pro forma, but I will reserve that point until I hear from you all further. I can see
103 in this case you are always proceeding on the idea that you are some kind of a guardian over this plaintiff. The question will arise whether this piece of land that he is now claiming from

you has ever been sold by him to you, and if it has, he has no right to be here claiming it back from you. He is insisting that you have not got any title to his land and that it is no part of any land that he ever mortgaged to you, but that you are mere trespassers, and if that is true, it is not material to you whether his title is valid. If it shall eventually turn out that these documents all affect that to which you have absolute title, you understand then I don't say but what you would have the better title if you have recorded deeds to that land.

Mr. POVENTUD: Let me read a portion of the deed to Your Honor. That the said farm already described was obtained by Mr. Sauri, together with Mr. Monserrate Garcia, on the 12th day of July of the year 1858, according to the deed drawn by the public writer (escribano) Don Lorenzo Catala, from Mr. Antonio Gotay, and appears inscribed in the registry of property of this district in book twelve of Fajardo, page 61, farm 537, first inscription, in favor of the referred to gentlemen, Garcia and Sauri, half and half.

Now how does he come with this deed so many years afterwards and assign not his interest in that undivided interest, but a
104 determined portion of it?

The COURT: We will have to see how it affects you.

Mr. POVENTUD: We note our exception to that.

The COURT: I reserve the right to say what the effect of this deed shall be in any motions that may arise in the case later.

The document in question was then placed in evidence, marked: Exhibit C for the plaintiff, and counsel for the plaintiff explained it to the jury.

Q. (Handing the witness another document:) What is that, Mr. Avalo?

A. That represents 249½ cuerdas which were purchased by Monserrate Garcia and Avelino Sauri, one-half of which Mr. Sauri sold to me.

The COURT: Do you offer it?

Mr. HORD: Yes, sir.

The COURT: Submit it.

The document is handed to counsel for the defendants.

Mr. HARTZELL: Now this deed is the presumed source of title for the 249 cuerdas to Garcia, Monserrate Garcia, as I understand it.

Mr. HORD: And Avelino Sauri.

Mr. HARTZELL: And which is supposed to contain 124 cuerdas, that is, one-half of it is supposed to contain that. I make the formal objection to the deed, practically the same as I made to the others, that the description is entirely different, not only from the description in the private contract, but it is different from the deed which Avelino Sauri finally made and which they are suing on in
105 this case, and as a matter of fact there is no sufficient description from which any human being could identify any land on earth. It does not give any boundaries at all.

Mr. POVENTUD: Further, we want to state that from this deed it appears that this purchase was made by Monserrate Garcia for him

and his son-in-law Avelino Sauri without Avelino Sauri appearing in this deed and without the said Sauri ever having accepted the said deed in said instrument or in another public instrument, the said Monserrate Garcia alone giving the money for the property and saying that he buys it for him and the other one. In other words, he buys it for both of them but Sauri does not appear in the deed.

The COURT: You hold that in this country it is necessary for a man who accepts a deed, to sign?

Mr. POVENTUD: Yes, that is true as to a sale. A sale can never be made in the name of another party unless he states the authority by which he appears.

The COURT: You will have to show me some law where a man could not make a deed to me, whether I was present or not, if he wanted to.

Mr. POVENTUD: I will show that article of the code.

Mr. HORD: This deed was made in 1858, and there wasn't any code and there wasn't any mortgage law at that time.

The COURT: I deny the right of any legislature to say that a deed cannot be made to me without I sign the same and ac-
106 cept it. That would be a deprivation of one of my fundamental rights that cannot be taken away from me. What have you to say to the objection Judge Hord?

Mr. HORD: Mr. Hartzell's objection is the formal one which you overruled before.

Mr. HARTZELL: No, my objection to this was that there was no description.

Mr. HORD: Then counsel did not read the whole document. It contains something which is unusual in a deed in Porto Rico. It gives the actual field notes of the surveyor.

The COURT: Let me see the deed.

The document in question is handed to the Court.

The COURT (after reading a portion of the document just offered): The objection is overruled.

Mr. HORD: Counsel's other objection is that it is not a document which could be inscribed. There is the inscription of it (pointing to the document).

Mr. POVENTUD: The mortgage law says that the inscription of a deed in the registry does not validate a nullity.

The COURT: The case will turn yet on the question of the identity of a piece of land.

The document in question was then placed in evidence, marked: Exhibit D for the plaintiff and counsel read it to the jury.

The COURT: What is the date of that?

Mr. HORD: That is dated, Sir, Fajardo, November 3, 1857.
107 The COURT: That was not registered for thirty years.

Mr. HORD: No, sir; not until 1902.

Mr. POVENTUD: We forgot to note an exception to the admission of that document in evidence.

The COURT: That was not registered for forty-four years.

Mr. HORD: Forty-four years; yes, sir.

Q. Mr. Avalo, in the contract which is in evidence, the contract which you made with Avelino Sauri for the purchase of these 124 cuerdas, it says that the farm is bounded on the north by the sugar plantation Convento.

A. Yes, sir.

Q. And in the conveyance which was made to you it is also described as being bounded on the north by the Hacienda Convento. Now the contract says that it is bounded on the south by Don Pascual Perez and the finca Aldea.

A. Yes, sir.

Q. And the conveyance says that it is bounded on the south by Juan Barreto and Tomas Garcia.

A. Because Barreto purchased afterwards the finca Aldea.

Q. So it is practically the same boundary then under a different name?

A. Exactly; and Perez afterwards sold to Tomas Garcia.

Q. Now the contract says that it is bounded on the east and west by the finca Bello Sitio and by José Avalo Sanchez, and the conveyance says that it is bounded on the east by lands which belonged to Don Avelino Rexach and today belonging to Don Avalo Sanchez and the Caño de la Yuca and Soledad Pacheco and the
108 Hacienda Bello Sitio, the Hacienda Bello Sitio being separated from this tract by the Quebrada de Fajardo, and Soledad Pacheco being separated from it by the Caño de la Yuca. How do you reconcile the difference between the two; from the contract to the deed; what makes the difference?

A. On account of the change of the owners of the abutting lands in the meantime.

Mr. HARTZELL: I submit that none of this is subject to oral testimony.

The COURT: Oh, yes, it is. This cures your objection. You objected to the deed being introduced because it didn't follow the boundaries which the contract stated he would in future convey, and now he is showing that the difference between the two is due to the difference in abutting owners that intervened.

Q. Now the contract says that this land was bounded on the west at the time of the contract by the plantation Bello Sitio and José Avalo Sanchez. Now the deed says: On the west by the Caño de Cayures and the Hacienda Bello Sitio.

A. It is the same.

Q. Until arriving at a point dividing the land of Nieves from that of the Sucesion de Pascual Perez.

A. That is it.

Q. Why the difference then?

A. There is no difference. It is the same boundary.

Q. It is the same land is it?

A. Don Avelino Rexach was on the boundary line of the
109 Caño, and, as after that I bought from him in the year 1880, now he is my adjoining land owner.

Q. (Handing another paper to the witness:) What is that?

A. This is for six cuerdas of land which I bought of Manuel Flores.

Q. Do or do not those six acres form any part of the 138 which you are claiming in this suit?

A. Yes, sir.

Mr. HORD: I offer it in evidence.

The COURT: Submit it to the gentlemen.

The document is handed to counsel for the defendant.

Mr. HARTZELL: We make the formal objection, if Your Honor please, that it is a simple document and that it cannot be used to attack a registered title.

The COURT: I suppose he expects to connect it up. If he does not, he will have to stand the consequences.

Mr. HORD: It is a simple document. We make no claim that it was afterwards merged into a public document, but we are not attacking their title to the 400 acres and if we don't show that it is not a part of the 400 acres belonging to Mrs. Veve, of course we are not entitled to recover.

Mr. POVENTUD: We further object, if Your Honor please, to the admission, besides the reasons for the exclusion of the other previous documents offered by the plaintiff, on the ground that it is not signed by the vendor Manuel Flores, but by a man named Julio Flores, and at the end of the document is an affidavit.

Mr. HORD: We make no point of the affidavit.

110 The COURT: Is he authorized to sign?

Mr. HORD: I will ask the witness about that. I wish to make this explanation as far as the affidavit is concerned. It was placed there without previous consultation with me.

The COURT: Affidavit of whom?

Mr. HORD: It is the affidavit of the man who says that he made it. It was put there without my knowledge, and if I had known it I would not have permitted it. I withdraw the offer temporarily.

Q. You say this is evidence of a purchase of six acres bought of Manuel Flores?

A. Yes, sir.

Q. It is signed by Julio Flores.

A. Yes, sir.

Q. Who is he?

A. His son.

Mr. POVENTUD: I object to that question on the ground that it is oral testimony to vary the terms of a written document.

The COURT: I overrule the objection.

Mr. POVENTUD: Take an exception.

Q. Why did he sign it instead of Manuel Flores?

Mr. HARTZELL: No, that is not the way to ask it. He should produce a written document.

The COURT: Ask the question.

Q. (The question is repeated to the witness by the Interpreter.)

A. Because his father did not know how to sign. I think
111 it is stated there: His father not knowing how to sign.

Mr. HORD: Reading from the document: In witness whereof, I have hereunto set my hand in Fajardo on this 30th day of June, 1878, at the request of my father who cannot sign. Julio Flores.

The COURT: Any witnesses to it?

Mr. HORD: Witness, V. Y. R. Soto and J. de Santiago.

The COURT: Ask the witness if he was present.

Q. Was José Manuel Flores present or not when this document was signed?

A. Yes, sir; of course, and the father of the judge of Aguadilla, Soto Nousa acted as a witness.

Mr. HARTZELL: Could I ask a man to sign a deed for me, orally?

The COURT: Yes, sir; it is done every day.

Mr. HARTZELL: I note an exception.

The COURT: You may put that in for what it is worth, and it is not worth very much. It is between the parties.

Mr. HORD: If this six acres is part of the lands that the defendants are claiming, it is no good title. If we don't show that it is not part of it, it is not a good title.

The document in question was then placed in evidence, marked: Exhibit E for the plaintiff, and counsel read it to the jury.

Q. (Handing the witness another document:) What is that, Mr. Avalo?

A. This is a document for four cuerdas and a half which I purchased of Avelino Rexach.

Q. Where was this land situated?

112 A. It is bounded on the north by the Hacienda Convento.

Q. Is it or not part of the land which you are claiming in this suit?

A. Yes, sir.

Mr. HORD: We offer this in evidence.

The document is handed to counsel for the defendants.

Mr. HARTZELL: I simply want to renew the same objection and not take up Your Honor's time. Your Honor is letting everything in.

The COURT: Note his objection, Mr. Harvey, to the admission of the document.

Mr. POVENTUD: We make the same objections as we have made to the previous documents, and except to the admission of same.

Mr. HORD: We make no claim that it ever matured into a public document, and I make the statement that if we don't show that it is different from the 400 acres we make no claim for it.

Mr. POVENTUD: It is unsigned by Avalo Sanchez.

The COURT: You may make that objection on the record but I won't subscribe to any such doctrine. Do you mean to say that if I possess 100 acres of land and deed them to you and you are not present to sign and receive them, it is not a valid deed?

Mr. POVENTUD: Not in Porto Rico. I can cite the law to Your Honor.

The COURT: You needn't read it to me because I wouldn't believe it if I saw it. That is not the law in any civilized
113 country.

The document was then placed in evidence, marked: Exhibit F for the plaintiff, and counsel read it to the jury.

Q. (Handing another paper to the witness.) What is that document?

A. This is a document for three cuerdas which I bought of Josefa Quiñones, widow of Huesten, on the boundary of the hacienda.

The COURT: Is that the same kind of a document as the others?

Mr. HORD: Yes, sir; the same kind of a document.

Q. Were you present when this was signed?

A. It is signed by me.

Q. You were present then?

A. Yes, sir.

Q. It reads as follows: And Domingo Rivera for the seller who cannot sign.

A. Exactly, she is a negro woman.

Q. This woman, Doña Josefa Quiñones, was she present or not when this document was made?

A. Yes, to receive the money.

Q. Is this or not part of the land you are claiming in this suit?

A. It forms part.

Mr. HORD: I offer it in evidence.

The COURT: Submit it to the other side.

The document was then handed to counsel for the defendants.

Mr. HARTZELL: The same objection: this is not even signed by the seller It is a third party who signs it.

Mr. POVENTUD: We object, if Your Honor please, to the introduction of this document for the same reasons as before, and be-
114 sides, because in this case the seller does not sign. This Mrs. Quiñones does not sign, but somebody else in her place.

The COURT: Is there a witness to the signature.

Mr. POVENTUD: Juan Ortiz and José A. Pacheco but they are not brought here.

The COURT: It is an old document.

Mr. POVENTUD: And another objection; according to the law of evidence, if the witnesses are alive, the signing witnesses should be brought here.

The COURT: It is an old co-ument.

Mr. POVENTUD: Of the year 1880, it is not thirty years old. The law of evidence says that a document must be thirty years old to prove itself.

The COURT: It doesn't make any difference. If it is nothing but a sheet of paper, it is all he has and as to him it is sufficient, but it may not be as to you.

Mr. POVENTUD: It is admitted?

The COURT: Yes.

Mr. POVENTUD: We except to that.

The document was then placed in evidence, marked: Exhibit G for the plaintiff, and counsel read it to the jury.

Q. Mr. Avalo, this conveyance from Josefa Quiñones recites that the payment was made in American money in 1880. Will you explain that if you can?

The COURT: Is that the way it is in the Spanish copy?

Mr. HORD: That is the way it is in the Spanish copy; yes, sir.

A. At that time the American money circulated here. Prior to exchange of the money, American money circulated here.

115 The COURT: How many dollars was it?

Mr. HORD: Ninety dollars.

A. And in the document it is stated so.

Q. (Handing another document to the witness.) What is that? Without stating the contents, what is it?

The COURT: Answer, Mr. Witness, if you know.

A. This is a petition which I filed after I was discharged from bankruptcy, asking for those documents.

Q. The ones that have been introduced in evidence you mean?

A. Yes, sir; which were attached to the bankruptcy proceedings.

Mr. HORD: We offer this in evidence.

The COURT: What is the object of this?

Mr. HORD: It is a certified copy.

The COURT: Of what?

Mr. HORD: It is a certified copy of part of one of the records in the district court of San Juan showing on what date he applied to have returned to him these documents so that he might have them executed into public documents.

The COURT: And you offer this to show the date on which he did it?

Mr. HORD: Yes, sir.

The COURT: Show it to the other side. What is the date of it?

Mr. HORD: I think it is 1902. It is about that time.

Mr. HARTZELL: It has got a whole lot of extraneous matter in it. It has reference to a lot of law suits.

The COURT: Why isn't his word on the stand here just as 116 good as anything else?

Mr. HORD: Yes, but I didn't anticipate that counsel would admit anything.

The COURT: Ask the question. It is stricken out.

Q. Sauri made this conveyance to you in 1902.

A. Yes, sir.

Q. Why wasn't it made before?

A. Because I was incapacitated as a bankrupt, being adjudged bankrupt.

Q. These papers which we have just introduced in evidence, the contract with Avelino Sauri and these extrajudicial conveyances of

the six, four and a half and there cuerdas, where were they during the bankruptcy proceedings against you?

A. Attached to the bankruptcy proceedings.

Q. How did you get them back?

A. Filing that petition and then the court ordered them returned to me.

The COURT: The Court holds the petition not necessary. The man's word on the stand is sufficient. The petition has a lot of extraneous matter in it and it is stricken out.

Mr. HORD: I don't think it has any extraneous matter.

The COURT: Mr. Hartzell said it had, but it is not necessary anyway.

Q. (Handing the witness another document.) What is that?

A. This is the deed executed by the court of Humacao when I bought in the plantation Bello Sitio at public sale.

The COURT: This is his source of title to the land that he gave the mortgage to the lady for?

117 Mr. HORD: Yes, sir: I am trying to show both chains of title so there will be no confusion about it.

Q. Who is Monserrate Garcia?

A. A farmer of that locality, my father-in-law.

The document is handed to counsel for the defendants.

The COURT: I assume there will be no objection to this, as it proves your title if it is correct.

Mr. HARTZELL: I don't think there is any objection to this.

Mr. POVENTUD: No objection.

The document was then placed in evidence and marked: Exhibit H for the plaintiff.

The COURT: Tell the jury what it is, Judge Hord. I don't believe it is necessary to read it all.

Counsel then read a portion of the document to the jury and explained the balance to them.

The COURT: What is the date of that?

Mr. HORD: It is dated 1880.

Q. (Handing another document to the witness.) What is that, sir?

A. This is a copy of the mortgage deed which I executed in favor of the widow of Veve in the year 1885.

The document is handed to counsel for the defendants.

Mr. HARTZELL: There is one place we will agree. We won't object to that.

These are all certified translations?

Mr. HORD: I think this document was translated by Mr. Fano, and the other documents we have were translated by Mr. Castro. You recollect I spoke to you about them.

Mr. HARTZELL: Oh, yes. Mr. Castro's translations are all right.

118 The COURT: If you ascertain that there is any difference between the copy that you have and this one, you may correct it at any time.

Mr. POVENTUD: I suppose it is admitted by Judge Hord that it is duly inscribed.

Mr. HORD: Yes, but it doesn't make any difference though. We make no contention about the mortgage as to whether it was inscribed or not.

Mr. POVENTUD: No objection.

The document was then placed in evidence and marked: Exhibit I for the plaintiff, and counsel read a portion thereof to the jury.

Q. (Handing another document to the witness.) What is that?

A. This is a deed executed by the judge in favor of the widow of Veve of the plantation Bello Sitio.

Q. Under the mortgage executed by you, which I have just read?

A. Yes, sir.

Mr. HORD: I offer it in evidence.

The COURT: Any objection, gentlemen?

Mr. HARTZELL: Certainly not, this is our deed.

Mr. POVENTUD: No objection at all, if Your Honor please.

The COURT: Now what sort of a description did the judge put in that deed.

Mr. POVENTUD: That copy does not show the inscription.

Mr. HORD: We make no point of that.

Mr. POVENTUD: It is admitted by all parties that it was duly inscribed.

The COURT: On what date?

119 Mr. POVENTUD: In book 31 of the files or archives of the registry, book five of the municipality of Fajardo, page 237, over, finca No. 9, duplicate inscription No. 7, Humacao, January 29, 1892.

The COURT: Did she keep her mortgage off the records for six years?

Mr. POVENTUD: No, sir; this adjudication was made to her in December, 1891, and she had the inscription made in January, 1892.

The COURT: Oh, that is the inscription of the deed. The mortgage was recorded before that, wasn't it?

Mr. HARTZELL: The mortgage was recorded long before that.

The document was then placed in evidence and marked: Exhibit J for the plaintiff, and counsel read a portion of it to the jury.

Q. (Handing another document to the witness.) What is that, sir?

A. This refers to a tract of land bought by Salvador Gonzalez of Monserrate Garcia.

The COURT: What is the purpose of that?

Mr. HORD: That goes back and proves Monserrate Garcia's title.

The COURT: That is to what?

Mr. HORD: The four hundred.

The COURT: What four hundred? The Bello Sitio?

Mr. HORD: The four hundred that were sold at public sale and bid in by Avalo Sanchez. We propose to show purchases made by Monserrate Garcia at this particular place, which went to make up the land that he had at that time, in order to make up the land
120 which the court sold to Avalo Sanchez.

The COURT: Why is it necessary to go back that far?

Mr. HORD: The whole contention in this case will be whether Monserrate did or did not own four hundred acres besides the hundred and thirty-eight.

Mr. HARTZELL: Let us see the document and then we will state our objection.

The COURT: Yes, show him the document.

Mr. HARTZELL: This purports to be a deed for 67 acres of land at a place called Aldea.

The COURT: He will connect it in some way or it won't be available.

Mr. HARTZELL: What I object to with reference to this is that it cannot pos-ibly in any wise affect or modify the description that he put into this mortgage that he gave to this woman.

The COURT: That is true.

Mr. HARTZELL: This man bought it at an execution sale as one tract, Bello Sitio. He bought it from Monserrate Garcia. Now we don't know what Monserrate Garcia had or where he bought it, but now he proposes to show that Monserrate Garcia at some time bought a property called Aldea.

The COURT: No, he is going to show that he not only bought 400 but also bought 138.

Mr. HARTZELL: I don't understand that he proposes to show that.

Mr. HORD: We don't propose to show that Monserrate Garcia had 538 acres of land out there but we are endeavoring to
121 show that our client acquired the 138 from another source altogether, but I propose to show that Monserrate prior to that time bought enough land to make up the 400. We offer this conveyance for the purpose of showing that Monserrate Garcia had 400 cuerdas which the court could deed, and doubtless did deed to this man and he mortgaged it to Mrs. Veve.

Mr. HARTZELL: Let me say a word. This is a most important trial. This case is liable to have to be carried up and now we are going to get a record here that is going to be almost prohibitive on appeal. Now let us see how this could possibly be connected with anything. This man has introduced the deed which is the source of his title, and that is the deed from the court on the execution sale. Now what difference does it make how much land Monserrate Garcia had. Monserrate Garcia may have owned the whole township out there but it doesn't affect this case. The question is, what did Monserrate Garcia deed to this man and what did this man deed to the widow.

The COURT: Judge Hord, this might be good on rebuttal.

Mr. HORD: I don't have to go back very far, not more than six months. Your Honor will recollect that the whole contention of

counsel at that time was that we had not shown that Monserrate Garcia had more than the 400 acres.

122 Mr. HARTZELL: Not on your life. I never made any such claim.

Mr. HORD: We can connect this by testimony to show to Your Honor that these particular pieces of land were the very ones bought of Monserrate Garcia in the jurisdiction of Fajardo and we can show to Your Honor that that land is what Avalo Sanchez took under that conveyance and that it is what he mortgaged to the Widow Veve and afterwards sold to her. The very crux of the proposition is that Avalo Sanchez had 538 cuerdas.

The COURT: I can well see, Mr. Hartzell, where he has got at some point in this case to show this in answer to your contention that he never had but four hundred acres of land.

Mr. HARTZELL: No, he may have had five or six or seven hundred acres of land. We contend that he sold us a piece of land by certain definite boundaries, and we are going to bring all the 'colindantes' to show that it is the same.

Mr. HORD: I offer to connect it.

Mr. HARTZELL: We don't dispute that Monserrate Garcia had the 400 acres.

The COURT: I am going to let that in. It cannot hurt you if you have an honest case here.

Mr. HARTZELL: I note an exception to that going into the record.

The document was then placed in evidence and marked: Exhibit K for the plaintiff, and counsel read a portion of it to the jury.

The COURT: If this woman allowed other people to take
123 off the land from the sides of this property, she cannot get this man's land to make up the deficiency.

Q. (Handing the witness another document.) What is that?

A. The sale of a tract of land by Francisco de la Cruz to Monserrate Garcia, which comprised part of the plantation, which made up the plantation.

The COURT: Offer them all in a bunch.

Mr. HORD: We offer the following: A deed from Francisco de la Cruz to Monserrate Garcia of twenty-two and a half cuerdas in the barrio of Quebrada of Fajardo, dated April 30, 1874. A deed from Ramon Roberto to Monserrate Garcia of ten cuerdas at the Quebrada of Fajardo, dated November 28, 1874. A deed from Manuel Guzman to Monserrate Garcia of eighteen cuerdas at the Quebrada of Fajardo, dated June 23, 1865. A deed from Manuel de Diego to Monserrate Garcia of twenty-three and three-quarters cuerdas of land, dated March 8, 1862. A deed from José Ramon Becerril to Monserrate Garcia of thirty-six cuerdas, dated July 13, 1861. A deed from Bibiano Ruiz to Monserrate Garcia of nine and one-fifth cuerdas, dated June 11th, 1860. A deed from Catalina Vega and Luis Gonzales as attorney-in-fact for Estebania Vega, to Monserrate Garcia, dated October 18, 1850, for nine cuerdas. A mortgage executed by Monserrate Garcia to Carlos Rodriguez, in which he recites that he bought from Pedro Maria Casanova 125 cuerdas, dated September 29, 1853. We could not find that conveyance.

Those nine conveyances, together with the one which we
124 have already introduced from Pedro Gotay to Monserrate Garcia make 445 2-10 cuerdas.

The COURT: Those instruments are permitted to be introduced to show the fact only that this man Monserrate Garcia had bought land in that vicinity previous to the sale of his estate to this plaintiff, to the extent that altogther he owned at that time 444 cuerdas.

Mr. HARTZELL: Here I desire to note an exception and to make this further objection, that is, that he has shown Monserrate Garcia's title to land, under Your Honor's permission, but it doesn't make the 400 acres that are contained in this man's deed to the widow. It makes a whole lot more. Now how are you going to get Bello Sitio carved out of it?

The COURT: I don't know about that.

Mr. POVENTUD: I want to add some more grounds: That those titles are too remote in this case to be of any materiality, and further, that the admission of them would be an infringement of article 380 before referred to in this case.

The COURT: These deeds are only admitted to show that he had this land to sell.

Mr. POVENTUD: Note an exception.

The documents were then placed in evidence and marked: Exhibit L for the plaintiff.

Q. What relation, if any, did the conveyances to Monserrate Garcia which have just been put in evidence, from Salvador Gonzalez, Francisco de la Cruz, Ramon Roberto, Manuel Guzman,
125 Manuel de Diego, José Ramon Becerril, Bibiano Ruiz, Catalina Vega and Pedro Maria Casanova, what relation did those conveyances have, if any, to the plantation Bello Sitio belonging to Monserrate Garcia?

A. That is the formation of the plantation.

The COURT:

Q. How do you know that?

Mr. HORD: How do you know that?

A. Because it so appears from the deeds and because my father-in-law told me so.

Mr. HARTZELL: Those are both good reasons for striking it out.

The COURT: That will be left.

Q. Did or did they not form any part of the land which you acquired by judicial sale of the land belonging to Monserrate Garcia?

Mr. HARTZELL: I object, if Your Honor please, because these descriptions are already in deeds and all written, and there is no rule of evidence that I know anything about that will allow anybody to say that they are made up so and so.

The COURT: That will be stricken out.

Court adjourns to 9:30 a. m., December 9, 1909.

DECEMBER 9, 1909.

Q. Yesterday, Mr. Witness, we introduced a conveyance from Gonzales Zapatero to Monserrate Garcia for sixty-seven acres known as "La Aldea" or "El Aldea", whatever it is. Do you know what became of those acres after Mr. Monserrate Garcia bought them?

A. He sold them.

Q. Did he sell them before or after the judicial sale by which you became the owner of Bello Sitio?

126 A. I am not sure because it did not form part of Bello Sitio.

Mr. HORD: The object of that testimony is to correct an error into which I fell yesterday by introducing that deed. That would reduce the number of acres down sixty-seven acres.

Mr. HARTZELL: That was the objection I made to the deed.

Q. When did you first go to live at Bello Sitio?

A. I took charge of Bello Sitio in the year 1874 as manager and was to get one-third of the profits.

Q. As manager for who?

A. Of Don Monserrate.

Q. Don Monserrate Garcia?

A. Yes, sir.

Q. How long have you known the piece of land which is called the "Estancia Sauri," which contained 249½ cuerdas?

A. Since the year 1874.

Q. When you took charge of the Hacienda Bello Sitio in 1874 as administrator of Mr. Monserrate Garcia, did any part of the 249½ acres of the "Estancia Sauri" form part of the Bello Sitio?

A. No, sir; when I took charge of the plantation, Don Monserrate told me: Here you have one-half of the 249 cuerdas which I bought of Gotay and this belongs to Avelino Sauri and he managed that in partnership with him.

Mr. POVENTUD: I move to strike out that answer on the ground that it is hearsay evidence.

The COURT: He may connect it. He can ask him another question, if he knew that Bello Sitio was separate and apart, that man being the *owner* of both. I will let that stand.

127 Mr. POVENTUD: We note an exception.

Q. Did or did not the 124¾ acres which formed a part of the 249 acres owned by Monserrate Garcia, did or did not they form part of the Bello Sitio at that time?

A. No, sir; they did not. Don Monserrate did not turn over that to me as belonging to Bello Sitio but as of Sauri.

Q. That is of the Estancia Sauri?

A. Yes, sir.

Q. But as belonging to him?

A. Yes, sir; he was in Caguas and he came from Caguas at that time to lease from me.

Q. I am not asking you now about the 124 acres that you bought. I am asking you about the 124 acres that Monserrate Garcia owned.

A. Those are of the plantation that belonged to him.

Q. What I am asking you now is: When you took charge of the Bello Sitio as administrator of Monserrate Garcia, did or did not the 124 acres which had been bought by Monserrate Garcia form a part of Bello Sitio.

Mr. HARTZELL: That is objected to as leading.

The question was read by the Stenographer for the information of the Court.

The COURT: I think you had perhaps better ask him what lands made up the Bello Sitio and then ask him that afterwards.

Mr. HORD: I asked him that yesterday when I introduced all these purchases and he testified that they went to make up the Bello Sitio.

Mr. HARTZELL: Then what is the object of this?

128 The COURT: The whole controversy here being as to whether these 124 acres did form part of the Bello Sitio.

The question was read again by the Stenographer for the information of the Court.

Mr. HORD: This is asked to show that Monserrate Garcia's one-half of the 249 acres went to form part of the Bello Sitio, which I propose to follow up by showing that the other 124 never did belong to Bello Sitio. I am trying to distinguish between the two 124 acre pieces.

The COURT: His objection is on the ground that it is leading, but I will permit it under the peculiar circumstances of this case.

Q. (The question was repeated to the witness by the Interpreter).

A. Yes, sir; they formed part because they belonged to Don Monserrate.

Mr. HARTZELL: Note an exception please.

Q. Now when you took charge of the Hacienda Bello Sitio in 1874, who was the owner at that time of the remaining 124 acres of the Estancia Sauri.

Mr. HARTZELL: Now, if Your Honor please, I insist on an objection to this question. This is a matter of record and the deeds are in evidence, and it is not permissible to ask this man orally who was the owner. He may think somebody was the owner.

Mr. HORD: We will stick to the deed. I will change the form of the question.

Q. Who was in possession?

A. Don Monserrate in partnership with Sauri.

Q. Did you at any time ever enter into possession of those

129 124 acres?

A. After I leased them from Sauri, a few days after I had taken possession of the sugar plantation.

Q. You mean a few days after you became the administrator of Monserrate Garcia?

A. That is it.

Q. Where was Sauri living at that time?

A. I think he lived in Caguas. He had left Ciales.

Q. What was his business; do you know?

A. He had been secretary of the city council of Fajardo, municipality of Fajardo, and later he had been mayor.

Q. Mayor of Fajardo?

A. Of other towns, Ciales and Morovis, etc.

Q. In the government service. How long did you continue to possess that 124 acres as the lessee of Sauri?

A. Up to the year 1885.

Q. Up to the year 1885; who continued in possession after 1885?

A. I. I bought them.

Q. How long did you continue in possession of them as owner?

A. Up to the time that they were attached in the bankruptcy proceedings.

Q. When was that; in what year?

A. In 1891.

Q. Who continued in possession of them then?

A. The trustees in bankruptcy.

Mr. HARTZELL: I object to that, if Your Honor please, and move to strike it out as being absolutely contradictory to their own complaint on which they are suing in this case, and this is the plaintiff.

130 The COURT: I don't quite understand your position.

Mr. HARTZELL: The complaint alleges that these defendants or their ancestor took this property away from them and that they have been in possession since. Now would he be allowed to show that other people were in possession, in the face of his own complaint?

The COURT: The fact is that this trustee was in possession.

Mr. HARTZELL: That is not our fault if it is in contradiction of his own complaint.

The COURT: You may save the point. I will hear you on that later.

Mr. HARTZELL: I will note an exception. He suing us for damages for being in possession through all these years and getting the crops off of this land.

The COURT: I will hear you on that also.

Q. (Handing another paper to the witness.) What is that?

A. This is the attachment proceedings of my property.

Mr. HORD: We introduce it for the purpose of showing that at that time there existed the 400, the 124, the 4½ and the 3 cuerda tracts.

Mr. HARTZELL: That emphasizes the objection I last made. We are here to answer a point which they made to the effect that in 1891 we through wrongful and illegal proceedings took possession of this property and took it away. Now that is the case we are here to try and now he proposes to introduce documents to show the exact contrary, that he went into bankrupty in 1891 and that

131 the trustee was put in possession of this property. It is absolutely contradictory to his own pleadings.

The COURT: I will hear you, Judge Hord.

Mr. HORD: The bankruptcy proceedings took place in 1891 as the witness testified. The point involved in this case is the question of the existence or non-existence of these different tracts of land and the question of their identity. I offer this certified copy of the judicial entry showing the delivery to the trustee in bankruptcy in 1891 in order to show the fact of the existence at that time of the 400, the 124, the 4½ and the 3 cuerda tracts, and that they were all turned over to the trustee in bankruptcy. We propose to show that the widow of Veve took possession not only of the 400 acre tract but of the others as well.

The COURT: Yes, I see. You may save the point on that, Mr. Hartzell. We will get all of this in and I will hear you at the end.

Mr. HARTZELL: Note an exception, if Your Honor please.

Mr. POVENTUD: We want to add as our objection to that too, that this is not a certified copy of any judicial records binding in any court but it purports to be a certified copy of another certified copy that is in the secretary's office of the San Juan district court now.

The COURT: What have you to say to that, Judge Hord?

132 Mr. HORD: A reading of it, Sir, will demonstrate what it is.

The document is handed again to Mr. Hartzell at his request.

Mr. HORD: I will withdraw that for the moment while counsel examines it, and go ahead with something else. I will offer it again in a few moments.

Q. When you purchased the six cuerdas of land from Mr. José Manuel Flores, who was in possession of this land?

A. He himself, José Manuel Flores.

Q. Who continued in possession after you bought them?

A. I did.

Q. Up to what time?

A. Up to the day of the attachment on account of the bankruptcy proceedings, the 12th of October, 1891.

Q. When you purchased the three cuerdas of land from Doña Josefa Quiñones, who was in possession of this land?

A. She was.

Q. Who continued in possession thereafter?

A. I did.

Q. Up to what time?

A. Up to the 12th of October, 1891.

Q. When they were taken from you in the bankruptcy proceedings?

A. They did not attach them; they occupied them.

Q. Took possession of them?

A. Yes, sir; the trustee, Gonzalez Darder.

Q. Who was in possession of the four and a half cuerdas of land which you bought of Avelino Rexach?

A. The wife of Avelino Rexach.

Q. Who continued thereafter in possession of them?

133 A. I did.

Q. Up to what time?

A. Up to the 12th of October, 1891.

Q. Were they taken possession of by the bankruptcy court?

A. Yes, sir; the trustee held them.

Mr. HORD: Now, Sir, we offer this document.

The COURT: You have not explained to me the objection of Mr. Poventud.

Mr. HORD: This is a judicial record, whether it is a copy or is not a copy. The certificate of the clerk is as follows: I, José E. Figueras, Secretary of the district court for the judicial district of San Juan, P. R., do hereby certify that the first piece of the involuntary insolvency proceedings which is indicated in the indices of this archive, has not been found, and I further certify that the foregoing is a true and correct copy from another certified copy which is found in the first piece of the said insolvency proceedings filed in this office at folios one and two. In testimony whereof, I affix hereunto my signature and the seal of the court this 12th day of November, 1908. Your Honor will see that the clerk certifies that it is a certified copy of a copy which exists in his office, the original being lost and not where it ought to be in that office.

Mr. POVENTUD: We object and take an exception to the admission of it.

134 The COURT: It seems to me he has accounted for the original and this is the best he can get.

Mr. POVENTUD: He has not shown that he has exercised due diligence. In that case the proper procedure is for the Court to issue a subpœna to that clerk to bring that document here.

The COURT: You can get that if you want it.

Mr. POVENTUD: I will not make any further objection, but note my exception to the admission of it.

The document was then placed in evidence and marked: Exhibit M for the plaintiff, and counsel read it to the jury.

Q. What were you using the land, which is being sued for in this complaint, for at that time in 1891?

A. For raising cane.

Q. Without regard now to the 100 acres which form the tract Bello Sitio, which had theretofore been transferred by the Court to Mrs. Veve, how much cane did you have, if any, on the 138 cuerdas which we are suing for in this case?

A. Eighty cuerdas.

Q. Of what year was that crop: I mean was it a first, second or third year of the prospective gathering of the crop?

Mr. POVENTUD: If Your Honor please, I would like to object to that question because it appears from the complaint that his right to recover is barred by the statute of limitations.

The COURT: You made your point on that before.

Mr. POVENTUD: Yes, but Your Honor said we might reserve the right to object to that at the time the question was asked.

135 The COURT: I am thinking of that seriously, whether or not he has any right to recover now for crops taken from his

trustee in bankruptcy is a grave question. Still if his bankruptcy proceedings failed absolutely.

Mr. POVENTUD: We are not to blame for that.

The COURT: And nothing was done and you got his land remaining to him, if he had any land there, and you got his crops, I am not sure but that he should recover for them, but whether he can recover at this late day or not is another question. You may save the point on that.

Mr. POVENTUD: I want to note this objection because it appears by the statute of limitations, since more than a year has elapsed from the time that as the witness testified, he was deprived of the said lands by the proceeding in bankruptcy in the year 1891, and further, that the incapacity of the bankrupt is no exception to the rule then in force that the statute of limitations ran against such incapacitated persons, they having the full right to go against their representative.

The COURT: I will hear you on that.

Mr. HORD: The statute of Porto Rico provides for the recovery of successive crops and Your Honor held that way in the case recently tried here where Mr. Mott was on one side and Your Honor made the same ruling in the Viso case.

136 The COURT: This is an entirely different proposition here.

Mr. HORD: It is not so different if Your Honor will consider it for a moment. In this case we propose to show that the defendants took possession of the canes, dug them up and took them off.

The COURT: If this is proper at all, you might show that. You may ask the question for the time being.

Mr. POVENTUD: Note my exception to that.

A. It was new cane, first growth.

Q. What became of those canes?

A. Don Juan Vaamonde, the attorney-in-fact of the widow of Veve, took them off.

Mr. POVENTUD: I again would like to move to strike that out. There is no such thing as gives authority to the agent of one to steal property from another. There is no authority for crime, and the stealing of canes on the property of this plaintiff does not give rise to an action for damages against these defendants after nineteen years.

The COURT: You may be right on that.

Mr. POVENTUD: I note my exception.

Mr. HARTZELL: I want now to enter a formal objection in the record at this point to any testimony respecting alleged damages which accrued more than one year prior to the institution of this suit.

The COURT: It is overruled.

Mr. HARTZELL: Note my exception to that and I won't argue it any more.

137 Q. What was Mr. Vaamonde's full name?

A. Juan Vaamonde Lopez.

Q. At the time he did this who was in possession of the 100 cuerdas of Bello Sitio?

A. The widow of Veve.
Q. Personally or through an agent?
A. Her attorney-in-fact.
Q. Who?
A. Don Juan Vaamonde Lopez.
Q. What did he do with these canes?
A. He dug them up and sold them and he took for himself what he chose.

The COURT: Show the connection of any of these defendants with this man if you can.
Mr. HORD: I will show it in a moment by written evidence. I might introduce it now before going into the value of the canes.

Q. (Handing a document to the witness.) What is that?
A. This is a certified copy from the secretary of the court containing several declarations by several parties, by Vaamonde and others.

Mr. HORD: We offer this. It is a certified copy issued by José E. Figueras, secretary of the district court of San Juan of the written statements under oath, with one exception. That of Juan Vaamonde Lopez is not under oath because he was the accused person. Taken in a proceeding which had for its object the recovery of these canes.
138 Mr. HARTZELL: We are going to try that now I suppose.
Mr. HORD: Will Your Honor listen to me for a moment?
The COURT: I will listen to you. This man's statement that these defendants took his cane, why isn't that all the evidence that you are entitled to here? Why should we try those criminal proceedings over here?
The jury is excused from the court room during the discussion as to the admission of this document.
Mr. HORD: These certified copies contain declarations by Mrs. Veve as well as Mr. Vaamonde, and we are offering them as the declaration of a dead person against interest.
Counsel for the plaintiff then read to the Court the testimony of the widow of Veve and Mr. Juan Vaamonde Lopez and the question was argued at length by both counsel.
The COURT: Judge Hord, I have made up my mind that you can only recover damages for one year, and I will hold to that, but I will permit you to ask this witness whether or not he has always contested with this lady the possession of this particular piece of ground in her lifetime, with a view to showing that the thirty years statute of limitations runs in this case. If any shorter statute than that runs in this case you have no right at all in this court, because I will hold that the trustee should have sued. And however it may work in this case, I believe firmly that you have a right, if
139 you have got title to this land, to recover it, but all of this other evidence about damages back for eighteen years, and with the mandate of the Supreme Court in the Ubarri case, I will not permit it to go to the jury. That is the end of it, gentlemen. I will permit you to recover the land and the damages for one year.
Mr. HORD: I understand Your Honor to mean not one year back

from now, but one year back from the date of the filing of this suit.

The COURT. Yes, that is it.

Mr. HOMAR. I ask Your Honor to note an exception to Your Honor's ruling. Inasmuch as this complaint was filed June 27, 1907, I understand Your Honor to rule that we may recover damages from June 27, 1906.

The COURT. I am holding that he may prove damages under the one year statute. He contends that that means from one year previous to the filing of the suit. What have you to say to that, Mr. Hartzell?

Mr. HARTZELL. Oh, yes, I think that is right.

Mr. HOMAR. Do I understand that Your Honor will admit, not for the purpose of proving damages, but on the question of title, the declaration against interest?

The COURT. No, I will not go that far. His statement here on the stand is better than that. I won't permit it for any purpose.

Mr. HOMAR. Note my exception.

The document was then marked N for the plaintiff, but

140 was not placed in evidence.

Mr. HOMAR. I want to submit before the jury returns, a certificate by Don José María San Juan, secretary of the Audiencia Territorial of Porto Rico. It is dated December 10, 1897.

Mr. Hartzell agrees to admit in the record that this man has litigated all these years for the possession of these lands.

Mr. HOMAR. This contains a certified copy of an agreement which was made by the trustee and Mr. Juan Vaamonde Lopez as to the ownership of these different pareels of land. It is the contract which they entered into. I offer it in evidence to show that at that time Juan Vaamonde Lopez as the attorney-in-fact of the widow of Veve entered into this agreement to return this land to Ayalo Sanchez.

The COURT. Was it part of that same criminal suit?

Mr. HOMAR. Yes, sir.

The COURT. What is the date of it?

Mr. HOMAR. The 27th of June, 1892.

The COURT. Where does it come from?

Mr. HOMAR. From the Secretary of the Audiencia Teritorial.

The COURT. You may examine this man pretty broadly.

Mr. HOMAR. I served counsel with a notice to produce the original. According to Mr. Vaamonde's testimony, they ought to have a copy of it. (Counsel reads a portion of Mr. Vaamonde's testimony to the Court.) I ask permission to introduce this as the next best evidence that the attorney-in-fact of this lady tried to turn it over to the trustee. We offer this contract, which is certified to

141 by the clerk of the then supreme court of Porto Rico, as to an agreement entered into between the attorney-in-fact of the widow of Veve and the trustee in bankruptcy of this plaintiff.

The COURT. Agreeing to turn over this land he is now suing for?

Mr. HOMAR. Yes, sir. The jury is not here, may I read it to Your Honor?

The Court: You may stand on your deeds, Judge Hord, and go to the jury. I will strike this out.

Mr. Hord: Your Honor note my exception, Sir.

The document was then marked "O" for the plaintiff but was not placed in evidence.

Mr. Hord: I would like to make my record on this offer and that of the other documents. I offer to the Court as testimony in this case, a certified copy under the hand and seal of José E. Figueras, secretary of the district court of the judicial district of San Juan, of the testimony of Doña Maria Diaz y Siaca, in Humacao, on the 18th day of June, 1892, in the proceeding which had for its object the punishment criminally of Juan Vaamonde Lopez and the recovery from Mrs. Maria Diaz y Siaca of the land herein sued for, and of the value of the canes taken by her attorney-in-fact, said testimony showing that she disclaimed any interest in the land in question; that the land which she had received under the mortgage sale of the 100 acres is complete with the exception of seventeen acres, and that she expresses herself as satisfied with that quantity, and
142 that she ratified and accepted the acts of her attorney-in-fact and agreed to pay said damages and return said 138 cuerdas, as being a declaration against interest, she being the ancestor of the defendants in this case, and from whom they have derived their title, if any they have. Also on the ground that it was evidence taken upon a former trial in a competent court between the same parties in interest, and having for its object the same purposes as this proceeding.

I also offer in evidence the statement made in the course of said proceedings by said Juan Vaamonde Lopez on the 23rd day of February, 1897, for the purpose of showing that he admitted as the attorney-in-fact of the said Maria Diaz, the ancestor of the defendants in this case, that he took possession of said 138 acres wrongfully and that he used and sold the canes growing thereon belonging to plaintiff herein, without authority of law; and for the purpose also of showing that he had before that time executed a contract with the trustee of Avalo Sanchez' estate in the name of his principal, Mrs. Maria Diaz, by which he bound her to return to the trustee in bankruptcy of said Avalo Sanchez, the land herein sued for, because the same belonged to said Avalo and not to said Maria Diaz, and obligated his principal to pay to the said trustee in bankruptcy of the said Avalo Sanchez' estate, the value of the
143 canes which he, the said Vaamonde, had wrongfully taken from said property, as well as the damages to the houses which he had caused without authority of law, which said proceeding, the plaintiff offers to show, was terminated without a final judgment because of the death of the said Lopez, and which statements further show that said lands were not returned, nor said damages paid, nor said contract carried out because one of the defendants in this case at present alive and in attendance on the court objected thereto.

Plaintiff further offers in evidence a certified copy under the hand and seal of José Maria San Juan, acting secretary of the second

section of the Audiencia Teritorial Court of Porto Rico, under date of the 10th day of December, 1897, setting out an exact copy of the contract entered into between Juan Vaamonde Lopez in the name of, and for the widow of Veve, Mrs. Maria Diaz y Siaca, and Miguel Correa, the trustee of the bankrupt, on the 27th day of June, 1892, providing for the return to the custody of the trustee of said four tracts of land, and for the payment of said damages. Plaintiff does not offer in evidence the other matters contained in the certificate of José Maria San Juan, acting secretary as aforesaid.

The COURT: Now make your objection.

Mr. HARTZELL: The objection we make, if Your Honor please, is that the documents offered are incompetent because the mat-

144 ters in controversy and the matters said to be contained in these documents are capable of primary proof by living witnesses, and that the documents are not so authentic and so presented to the Court as to justify them to be presented to the jury.

The COURT: Sustained.

Mr. POVENTUD: And further, because they attempt to show the right to recover for canes or damages, which right is barred by the statute of limitations of the island of one year.

The COURT: The objection is sustained for the reason that this witness now on the stand, plaintiff in the case, his own evidence with reference to his claims for this land is the best evidence, and the proceedings in the criminal case with reference to the alleged stealing of cane are too remote for the issues here, and because the Court holds that the statute of limitations has run against the right to recover damages in this cause, save for one year previous to the time of the filing of the complaint, and because the existence of the instrument certified to by José Maria San Juan, the existence of that instrument has not been properly shown, and the contents of such an instrument cannot be proved until it is shown by competent evidence that the document did at one time in fact exist.

Mr. HORD: Note our exception to Your Honor's ruling.

145 (The jury returns to the box.)

Q. Who was Miguel Correa?

A. A resident of that locality, of Fajardo.

Q. He was trustee for your bankruptcy estate at one time, was he not?

A. He was the second trustee.

Q. Who was the first one?

A. José Gonzalez Darder.

Q. And the second you say was Miguel Correa.

A. Yes, sir.

Q. In what year was José Gonzalez Darder appointed?

A. In the year 1891.

Q. And when did he cease to be?

A. On the 30th of January, 1892.

Q. When was Miguel Correa appointed

A. Before the 30th; I don't remember exactly. He took charge on the 30th of January, 1892.

Q. Do you know why Gonzalez Darder ceased to be the trustee in bankruptcy?

A. Because he resigned.

Q. Did you know Mr. Juan Vaamonde Lopez?

A. Yes, sir; a good deal.

Q. What relation was he to Mrs. Veve?

A. He was married to a daughter of Mrs. Veve.

Q. In connection with these difficulties that you were having with her in regard to your lands, who represented Mrs. Veve?

A. Juan Vaamonde who was her general attorney-in-fact.

Q. Did you have dealings with him in that capacity?

146 A. I had business transactions with the firm for many years.

Q. But with Mr. Juan Vaamonde Lopez in that character?

A. Yes, he was the man who attended to all her business.

Q. And you had business with him as such?

A. Yes, sir.

Q. Was that before or after these different lawsuits started?

A. Many years before.

Q. And down to what time did he continue to act as her attorney-in-fact, as far as you know?

A. Up to the time of his death.

Q. About what time did he die?

A. I think in 1897 or 1898.

Q. When the court of first instance ordered Mrs. Veve put in possession of the 400 acres of Bello Sitio, who took possession for her?

A. Vaamonde; it appears from the deed.

Q. You mean from the deed that was made by the court to her?

A. Yes, sir; it appears of record.

Q. You testified this morning about some canes. What became of those canes?

A. Vaamonde dug them up. After he took possession of the sugar plantation, he also encroached upon the farms there after the judge had returned to town, and took the canes there.

Q. Now, you used the expression "estancias" and "hacienda." Explain what you mean by estancia and hacienda.

A. Although it forms an aggregate or was in a mass or a body, the plantation of Monserrate Carit was one thing and the parcels of land which I bought was another.

147 Q. When you use the word "hacienda," to what do you refer?

A. The general plantation of Don Monserrate; Bello Sitio.

Q. Including or excluding the 138 acres that you are suing for now?

A. When the plantation belonged to me the whole thing was called Bello Sitio, but it carried the name of Bello Sitio together with the lands of Monserrate.

Q. Then when it belonged to Don Monserrate Garcia, what was its name?

A. Bello Sitio.

Q. Now, if you wanted to distinguish between the lands of Monserrate Garcia which were mortgaged by you to Mrs. Veve, and these four parcels of land that you are suing for, how would you distinguish by name?

A. There is one farm or plantation called Sauri, 124¾ cuerdas; the other one is named Flores of six cuerdas; and the other is called Rexach; and the other one Quiñones of three cuerdas.

Q. Who was trustee of your estate in bankruptcy when Vaamonde entered upon these four small tracts of land and took the canes?

A. Gonzales Darder, another sugar planter of that vicinity, but a few days afterwards he was taken ill and he abandoned that.

Q. Did you or your trustee in bankruptcy ever attempt to make any claim, or make any claim against Vaamonde taking possession of that land at any time?

A. As the trustee Gonzales did not pay any attention to it and he let things go, I came to San Juan to notify the judge of the district of San Francisco, and then the creditor Balbas and other creditors asked the judge to appoint a new trustee, and then they appointed Correa, and when Correa went over to take possession the last
148 day of January, 1892, they had already stolen the canes.

Q. Who had possession of those four tracts of land when Correa went there to take possession of them?

A. The trustee, but also Vaamonde.

Q. Did Correa secure possession or did he not secure possession of the four tracts of land you are now suing for?

A. Yes, sir; of the whole thing. Yes, it appears in the proceedings, and then he denounced the fact of the stealing of the canes.

Q. Who did he charge with stealing the canes?

A. Don Juan Vaamonde, and then the judge instituted——

Mr. HAETZELL: Hold on. I object if Your Honor please.

The COURT: That is enough, to state the fact.

Q. What did Correa do with these four tracts of land which you are now suing for?

A. He leased them to Don Gabriel Arruza.

Q. Who was Don Gabriel Arruza?

A. A gentleman of Fajardo.

Q. Where is he now?

A. He died.

Q. And where is Miguel Correa?

A. He is in Santo Domingo.

Q. How long did Arruza continue in possession of those four tracts of land as lessee?

A. Up to the time when he was appointed trustee afterwards.

Mr. HAETZELL: I desire to enter an objection at this time to any testimony of the possession of these farms there as lessee or otherwise by anybody except these defendants, as being an absolute contradiction of the allegations of the complaint. Now
149 he is testifying to the effect that the trustee in bankruptcy leased this to somebody, whereas he has stated in the complaint that we kept the absolute possession of them.

The COURT: You may have the record on it but I overrule it. Whether somebody else besides this attorney-in-fact was in possession during all these years, is good evidence to go to the jury on the question as to whether that person holding possession, was or was not holding as her agent.

Mr. HARTZELL: It is merely on the question of variance with the pleadings.

The COURT: I will overrule the objection.

Mr. HARTZELL: Note an exception.

Q. When Arruza was in possession of this land as lessee, who was he holding it for, himself or somebody else?

A. He was paying to the bankrupt's estate.

Q. Was he acting for himself or as the agent of somebody else?

A. For himself.

Q. After Arruza became trustee, who remained in possession of that land, of the four tracts of land that we are now suing for?

A. Arruza was appointed in 1895 because Correa had gone to Santo Domingo. He was appointed trustee, and he remained in possession from 1895 or 1896. I don't remember well, up to 1897, when he died. He died there in the town and the estate remained abandoned.

150 Q. In possession of who?

A. In possession of the widow of Veve.

Q. When did the widow of Veve get possession of the 400 acres, the 400 cuerdas?

The COURT: Under the foreclosure of the mortgage.

Mr. HORD: Under the foreclosure of the mortgage.

A. The 30th of October, 1891.

Q. And she has remained in possession of those ever since?

A. Yes, sir.

Q. Who was appointed as trustee of the bankruptcy estate in 1897 when Arruza died?

A. They did not appoint anybody because the widow of Veve filed a petition to the audiencia or old supreme court here asking that the plantation be turned over to her, and then the judge denied it and then they took an appeal and then the supreme court accepted the appeal to both effects and the bankruptcy proceedings remained in abeyance. For that reason, whenever I applied to the courts or filed a petition, the judge said that he had no jurisdiction.

Q. Now, in 1901 what happened, if anything?

A. In view of that situation that I had and that I still had nothing and that I could not file any suit and that I could not claim what belonged to me——

Q. You don't understand my question. What, if anything, did the widow of Veve do in 1901 about getting possession, before Judge Savage?

A. She asked to be put in possession of the plantation.

The COURT:

Q. Then she did not remain in possession since October
151 30, 1891?

A. That is the secret. She was in possession in combination with the trustees and the trustees did not stop her possession; did not prevent her possession.

Mr. HORD:

Q. During all of that time who had nominal possession and who had actual possession of the Bello Sitio; of the 400 acres?

A. Yes, the widow of Veve was always, allowed or consented by the trustees.

Q. Why was that, do you know?

A. Because the judge of Humacao had stated that pending the resolution of the question of jurisdiction, that the matter should remain in abeyance.

Q. Now in 1901 you say she applied for an order to be given possession of the Bello Sitio?

A. Although she held it without my knowing anything, and then they went there and for a second time they took charge or took hold of the estancias or the farms because there was no trustee there. Instead of calling me to turn them over the property, they went there, and, as there was nobody in the premises, they took charge of everything.

Mr. HARTZELL: Who? Let us find out.

The COURT: Who is 'they'?

A. The widow of Veve or her attorney in fact. I didn't go there.

Mr. HORD:

Q. You say Mr. Vanmonde Lopez had died in 1897 or about that time?

A. Yes, sir.

Q. Who acted for the widow of Veve in taking possession of those four tracts of land, the estancias which we are suing for?

152 A. Another attorney in fact.

Q. Who?

A. Miguel Saldondo.

Q. Is he alive?

A. Yes, sir.

Q. Living in Porto Rico?

A. He lives in Fajardo.

Q. Is he here in court, do you know?

A. I have seen him around.

Q. What right did the widow of Veve or Miguel Saldondo, her attorney, have to take possession of the four pieces of land in 1901?

A. Right they did not have anything at all. It is only their abuse, as I was not there and they did not notify me.

Q. Did you give them permission?

A. No, sir; nothing of the kind.

Q. Did you ever give anybody permission to take possession of them?

A. To nobody.

Q. Describe the class of land that composed these four parcels. What kind of land is it? What is it suitable for?

A. The parcels of land are bounded on the east by the Caño Ynea on the north by the Convento, with part of the Convento. The boundary line of the Convento is very long; on the south by the farm Aldea and the heirs or succession of Pascual Perez; and on the west by the Caño or Channel Cayures and following along the line of the Aldea and the plantation Bello Sitio.

Q. What land lies on the west side of the Caño Cayures?

A. The one-half of the land which belonged to Don Antonio Gotay.

153 Q. Part or not of Bello Sitio?

A. Yes, one-half, yes.

Q. Now what land lies on the east of the Caño Ynea?

A. There are several parcels of land; Casanova where the plantation was first; was in 1840.

Q. Any part of Bello Sitio?

A. That is Bello Sitio. It was there that Bello Sitio was founded.

Q. So Bello Sitio lies on the east of the Caño Ynea and on the west of the Caño Cayures?

A. Yes, sir.

Q. And the land that you are claiming lies in between those two creeks, as I understand it.

A. Yes, sir.

Q. Now you said that the Convento line is very long.

A. Yes, sir.

Q. And you have also testified that it bounded these four pieces on the north; this land that you are suing for.

A. Yes, sir; the whole, the aggregate also was bounded.

Q. Does the Convento or not also bound the Bello Sitio on the north?

A. Yes, sir; the south of Convento is the north of Bello Sitio.

Q. And is that true also of this land that you are claiming?

A. Yes, sir; because it was a mass. It was divided up. Don Monserrate had one side and Sauri took the other.

Q. What is this land, this 138 acres, what is it most suitable for?

A. It is first class land for sugar cane. They are raising canes there now which are the best of Fajardo.

Q. What is the usual rental price of cane lands per annum

154 in that section?

The Court:

Q. What has it been for the last three years?

A. Ten or twelve dollars, and even fourteen per cuerda.

Mr. Hord:

Q. That has existed for how long back?

A. Since shortly after the invasion or the American occupation.

The COURT: Find out how much of the land could be planted to sugar cane.

Q. How much of these 138 acres could be planted in cane?

A. The whole; it is all first class sugar cane land.

Q. You testified this morning or yesterday, I forget which, that Don Monserrate Garcia had sold the 67 acres of the Aldea which he had bought from a man by the name of Gonzalez Zapatero which formed part of the tract known as "La Aldea."

A. Yes, sir.

Q. (Handing the witness a document.) What is that?

A. This is a deed of sale for land executed by José Maria Garc , for land of the Aldea which I purchased of him.

The COURT: What is the purpose of that?

Mr. HORD: I offer it for the purpose of showing, in connection with the other deeds, in order to make the history of the title complete.

The COURT: What is the date of it?

Mr. HORD: 1878, before the mortgage.

The COURT: I don't think it has been identified sufficiently.

Q. This appears to be a conveyance of one hundred acres of land.

A. Yes, sir.

Q. Were or were not the 67 acres which you testified this morning had been sold by your father in law Monserrate Garcia, part
155 of the 100 acres set out in this deed?

A. Yes, sir.

The document is handed to counsel for the defendants.

Mr. HARTZELL: I would like to know whether it is part of Bello Sitio.

The COURT: You may bring that out on cross examination.

Mr. HORD: He testified yesterday to that.

Mr. HARTZELL: I make no objection if he says it is part of Bello Sitio.

Q. These 67 acres that you testified were sold by Monserrate Garcia and bought back by you in that conveyance from José Maria Garcia, where were they situated?

A. On the south of the plantation.

Q. Adjoining the same?

A. Bounding by a creek there or a brook.

Q. Did they or not form part of the land ordinarily known as Bello Sitio, that you mortgaged to the widow Veve?

Mr. HARTZELL: I object to it as immaterial.

A. Don Monserrate Garcia had 600 cuerdas of land; 100 cuerdas of Bello Sitio and that farm of Aldea, the sixty and odd cuerdas of the Aldea, and other cuerdas which made up the 600 on the boundary line between Luquillo and Fajardo.

Q. On the Luquillo or Fajardo side?

A. On the Luquillo side, in the municipality of Luquillo on the divide. When he turned over to me in the year 1874, he eliminated therefrom those farms.

Q. The farms in Luquillo?

A. Yes, sir: the Luquillo farm and the Aldea farm. After-
156 wards he sold them to two or three parties because he did not notify me of those transactions. And a few years later Don José Maria sold it to me.

Mr. HARTZELL: This is no part of Bello Sitio because it describes Bello Sitio as one of the boundaries.

Mr. HORD: The witness' explanation satisfies me that I was mistaken in offering it. I withdraw the offer. I offer in evidence a certified copy of the order of the Supreme Court of Porto Rico rendered on February 21, 1907, by which they put an end to the bankruptcy proceedings.

The COURT: I assume there is no objection to that, gentlemen.

Mr. HARTZELL: No, we are very glad to have it.

The COURT: Read it to the jury or make such statement of it as you see fit.

The document was then placed in evidence and marked: Exhibit P for the plaintiff, and counsel explained it to the jury.

Mr. HORD: That is all for the present.

Before the cross examination proceeds, I wish to make a formal offer of some other parts of that record. I don't care to argue it any further.

The jury retires.

Mr. HORD: We offer, Sir, for the purpose of proving the assessment of the value of damages of the cane, certified copy of the testimony given by Eduardo Rivera y Siaca and Domingo Rivera y Siaca on the 30th day of May, 1892, before the court at Humacao in the criminal proceedings aforesaid, showing that said
157 parties had been agreed upon by Doña Maria Diaz aforesaid and the trustee in bankruptcy to assess the damages, and that the same were assessed in the sum of thirty-five thousand pesos. And we also offer a certified copy of the testimony of Don Benigno de Santiago y Ojeda given before the same court on the 30th day of May, 1892, for the purpose of showing the amount of cane taken from said 138 cuerdas by said Juan Vaamonde Lopez, and also for the purpose of showing, together with the testimony of said Eduardo Rivera y Siaca and Domingo Rivera y Siaca, the then boundaries of the Bello Sitio 400 acre tract of land.

We offer also a certified copy of the testimony taken in the same proceedings, given by Don Gabriel Arruza y Echevarria on the 30th day of May, 1892, for the purpose of showing that the land which is the object of this suit, namely, the 138 cuerdas, never formed a part of the 400 cuerdas mortgaged by plaintiff to Mrs. Maria Diaz and subsequently adjudicated to her by the court.

We also offer a certified copy of the testimony of Rosendo Bas y Feijo taken in Humacao before the same court on the 19th of the month of November, 1892, for the purpose of showing the identity of the land herein sued for and that it formed no part of the land covered by the mortgage executed by plaintiff to said Maria Diaz.

158 We do not offer the testimony on pages 14 and 15 of the translation, given by Doña Maria Diaz y Siaca concerning the proceeding to foreclose the mortgage.

We also offer a certified copy of the testimony of Don Domingo Cerra y Gonzalez in the town of Fajardo before the acting municipal judge on the 11th day of the month of November, 1891, to show that the land herein sued for, formed no part of the 400 acres of land mortgaged by plaintiff to Mrs. Veve, and also showing the boundaries of the larger tract.

We also offer in evidence a certified copy of the official opinion rendered by the experts, Eduardo and Domingo Rivera y Siaca, to the court in Humacao, on the 14th day of March, 1893, showing the value of the canes taken from portions of said 138 acres, and of the damages occasioned by said Juan Vaamonde Lopez to the houses on the said tracts herein sued for, aggregating the sum of thirty-five thousand pesos, all of said persons having been shown to the Court in this trial to have heretofore departed this life.

Mr. HARTZELL: We make the same objection.

The COURT: Make it formally. The offer is made very formally.

Mr. HARTZELL: Counsel for the defendants object to the admission of the documents offered for the reason that the same are incompetent in this trial inasmuch as the same purport to be por-
159 tions of the record in a criminal proceeding had many years ago and that the facts and matters therein referred to, are all capable of direct proof by living witnesses, and that it is incompetent in this trial. Counsel for defendants also in this connection make the objection specifically to the documents themselves, not accepting the purport of the documents as contained in the statement of counsel.

The COURT: The objection is sustained on the ground that it is extraneous and no proper opportunity for cross examination would exist, if permitted to be introduced, and because the same is immaterial in this issue under the Court's ruling heretofore made, and generally. That is all. Is that all, Judge Hord?

Mr. HORD: That is all.

Witness retires.

By agreement of counsel, the witness George Bird called for the defense, testified at this time before the cross examination of the witness José Avalo Sanchez was continued.

The jury returns to the box.

160 GEORGE BIRD ARIAS being called as a witness in behalf of the defendants, out of order, was duly sworn and testified as follows:

Mr. HORD: I would like an explanation made to the jury as to why this witness is called at this time.

The COURT: Gentlemen of the Jury, this witness is called at this time out of order by agreement of counsel. He is a witness for the defense and by agreement he is permitted to testify now so that he

may depart, as he cannot afford to await the proper time in the trial to introduce his evidence.

Mr. HARTZELL: And also, if Your Honor please, counsel for defendants in offering this witness, under these irregular circumstances, do so with the understanding that the offering of evidence by us at this time will not prejudice any motion that we may see fit to make at the end of the plaintiff's case.

The COURT: Yes, that is the bargain also.

Mr. HORD: Yes, I suppose so.

Direct examination by Mr. HARTZELL:

Q. Mr. Bird, what is your full name?
A. George Bird Arias.
Q. Where do you reside?
A. Fajardo.
Q. What is your business?
A. I am manager of the Fajardo Sugar Company.
Q. And how long have you lived in that vicinity?
A. Forty years with the exception of three that I lived in the States.

161 Q. And what is your age?
A. Forty.

Q. Are you acquainted with the premises in that vicinity known as Bello Sitio?
A. I am.
Q. How long have you been acquainted with those premises?
A. I suppose in the neighborhood of twenty-five years.
Q. Did you ever reside in that immediate vicinity?
A. I lived in the estate Convento which is neighboring to Bello Sitio, for four years.
Q. Is Convento a 'colindante' or boundary line of Bello Sitio?
A. Yes, it is.
Q. What years did you live there?
A. From 1892 to 1896.
Q. And how well did you know those premises in that vicinity prior to that time?
A. I had a general knowledge but I didn't know them well except after I lived there.
Q. When you went there did you know in a general way the boundary lines?
A. I did.
Q. Of the different places there; did you know Bello Sitio at the time that Avalo Sanchez, the plaintiff here, was the owner?
A. I did.
Q. And at the time that they were turned over to the widow Veve?
A. I remember that time.

Q. Do you recollect or did you know the number of acres
162 or cuerdas, that Bello Sitio comprised?
A. I always heard about Bello Sitio being in the neighborhood of 400 acres.
Q. You knew the boundary lines, that is, in a general way?

A. I knew the boundary lines in a general way and I knew better than the others, the boundary line with this plantation where I was.

Q. With Convento?

A. With Convento.

Q. Now taking the extension of the line between those two properties, which was the longer: that is to say, did Convento cover the entire north of Bello Sitio?

A. No, the north line of Bello Sitio which bounded with the south side of Convento, it bounded with Convento and the other estate which is called Dos Hermanos.

Q. So Convento did not cover the entire north line of Bello Sitio?

A. No, Convento did not cover the whole north line of Bello Sitio.

Q. Do you remember who was on the east of Bello Sitio?

A. On the east?

Mr. HORD: We are speaking now I suppose not of the present, but in 1891.

Mr. HARTZELL: No, when this transaction was made or before that.

Mr. HORD: I submit that as Mrs. Veve was given possession in 1891, that is the time that Mr. Bird's testimony should refer to.

The COURT: Yes, he is right about that, Mr. Hartzell.

Q. What do you recollect about the eastern boundary there? What did it join with?

163 A. I think that Dos Hermanos has a boundary on the eastern line, and there is also a farm there belonging to a man in Fajardo.

Mr. HORD: I again ask counsel to direct his questions to the time when the widow of Veve was given possession in 1891.

Q. I will say when Avalo Sanchez made the mortgage to the widow, that was in 1885, did you ever know from the time you have first known those farms, did you ever know of any change of the boundary lines?

Mr. HORD: I object to that. I think it is leading.

The COURT: He could put it differently.

Q. Have you any knowledge of any changes that have taken place in the boundary lines?

A. At that time I didn't know anything about it.

Q. Was it one tract of land, a single tract, a contiguous single tract of land or was it made up of different tracts?

A. I know that the San Juan-Fajardo road traversed the property.

Q. Were there separate tracts of land in the sense of other lands between them?

A. Not that I know of.

Q. To the best of your knowledge then it was one tract except for the division by the road.

A. One solid piece.

Q. I call your attention to a map, and of course this is with the

understanding that we will identify it,—and ask you whether you can recognize that as being a substantially correct outline of that property Bello Sitio (handing a map to the witness).

Mr. HORD: We object to that because the map ought to
164 speak for itself.

Mr. HARTZELL: We will connect it up.

Mr. HORD: I also object to it because this map was made when?

Mr. HARTZELL: It was made since the last trial.

The COURT:

Q. Look at the map, Mr. Bird, and see if you can recognize the Bello Sitio described on it, and state whether or not it is so described there as you have always known that estate Bello Sitio.

A. Yes, sir; I think so.

Q. Have you examined it carefully?

A. Yes, sir; I have.

Mr. HARTZELL:

Q. Can you identify any of the other 'colindantes' than the ones you have already mentioned, as having been 'colindantes' when you knew that property?

A. The only 'colindantes' that I don't know very much about are those on the south, but all the others I know perfectly well.

Q. Do you know the 'colindantes' as being the ones that are named on the map?

A. Yes, I think they are right, according to my knowledge.

Q. There is a Caño Ynea there. Do you recognize that?

A. Yes.

Q. Do you remember that on the ground too?

A. Yes.

Q. And then do you remember a Caño Cayures?

A. Yes.

Q. Do you know whether it is located on the property?

A. Yes, that goes through Convento.

Q. Now those two caños are both of them towards the
165 center of the property, are they not?

A. Well, more or less.

Q. The land between those two Caños and lying south of Convento, was that part of Bello Sitio?

Mr. HORD: That is certainly leading.

The COURT: That is as leading as it can be.

Q. I want to find out whether the land between those two caños was Bello Sitio.

A. Yes.

The COURT:

Q. What is a caño, Mr. Bird?

A. A caño is a very small brook which sometimes in rainy weather carries water and yet sometimes it is dry.

Q. It is a little hollow?

A. It is not exactly a straight ditch. It is a crooked ditch.
Q. It is a dry brook?
A. Well, sometimes it is not dry. It is not quite a brook because a brook is more in the shape of a small river, while a caño is something less important.

Mr. HARTZELL:

Q. Now I will ask you to state whether or not, in your opinion,—and you say you know that well, the boundary line between Convento and Bello Sitio is properly placed on that map.
A. I think it is.
Q. Has that line ever been changed since you have been acquainted with those properties?
A. Not to my knowledge.
Q. And the same lands are today in the different fincas, to the best of your knowledge?
A. To the best of my knowledge, on that side. I don't
166 know the other sides.

Mr. HARTZELL: I think that is all I care to ask the witness.

Mr. POVENTUD:

Q. Now, Mr. Bird, do you know Bello Sitio by having been there many times?

Mr. HORD: That is leading, Sir.
Mr. POVENTUD: That is not leading at all.
The COURT: That is well in the case.

Q. How many times have you been there, Mr. Bird?
A. I don't remember how many times, several times.
Q. Is that channel of Ynea on the eastern side of Bello Sitio?
A. On the eastern side of Bello Sitio.

Mr. HORD: The map shows for itself and the question is leading.

Q. Will you please point with your finger where the channel of Ynea is?

Mr. HORD: I object to that. The map has not been identified yet.
The COURT: The map may be stricken out yet. In all fairness, Mr. Poventud, you ought to examine this man almost without reference to this map. We ought not to show this map to the jury until we let it in. I don't know what objections may be raised to it yet.

Q. Now, Mr. Bird, from the knowledge that you have of those farms, of that Bello Sitio land, if a finca is described as I am going to tell you, would it or would it not be included in Bello Sitio?

The COURT: That would be calling for a legal opinion.

Q. Described as follows; suppose there is a tract of land described

as follows: On the north by Convento, on the east by the
167 channel Ynea, on the south by the Aldea and on the west by Bello Sitio. Would that be included in Bello Sitio; in what you know as Bello Sitio?

A. No, if it bounded with Convento it could not be because the boundary of Bello Sitio is with Convento.

The COURT: You don't understand the question, Mr. Bird. He is asking you if a piece of land is bounded as follows: On the north by Convento, on the east by the channel Ynea, on the south by Aldea and on the west by Bello Sitio; would such a piece of land as you know Bello Sitio be included in it?

A. Sure, anything bounding on the south side of Convento must be part of Bello Sitio.

Mr. POVENTUD:

Q. Now this Ynea crosses Bello Sitio from north to south, doesn't it?

A. From south to north.

Q. Is that where a railway of a corporation of Fajardo passes?

A. It crosses it.

Q. Right in the same direction of the brook?

A. Yes, practically, not exactly.

Q. That plan that you saw of Bello Sitio, does it truly represent Bello Sitio as the same land that you know in the possession of the heirs of Mrs. Diaz?

Mr. HORD: I object to that as leading.

The COURT: It is leading.

Q. Do you know the succession of Mrs. Maria Diaz?

A. Yes, I do.

Q. Do you know whether they possess any hacienda in Fajardo, any cane lands in Fajardo?

168 A. I knew that they possessed this Bello Sitio.

Q. Well, this land that you know them possessing, is it truly represented by that map?

A. It is to my knowledge.

Q. So from your knowledge, what you know that they actually possess, is only what that map represents?

A. From my knowledge.

Q. Did you know a lady by the name of Josefa Quiñones in that neighborhood?

A. I did not.

Q. A man by the name of Avelino Rexach?

A. I heard of him; I have heard of him when I was a boy. He left Fajardo a good many years ago.

Mr. POVENTUD: That is all.

Cross-examination by Mr. HORD:

Q. How old did you say you are, Mr. Bird?

A. Forty.

Q. And you were born in Fajardo?
A. Born in Fajardo.
Q. And you continued to live there up to what time before leaving there?
A. I lived up there until I was twelve.
Q. Forty years back from now would make you born in 1869.
A. 1869.
Q. Then you left there in 1881.
A. In 1881.

Q. Where did you go, Mr. Bird?
169 A. I went to the States.
Q. How long did you remain in the States, Mr. Bird?
A. Three years.
Q. And you returned then in 1884?
A. Yes, sir.
Q. Then you were fifteen years old at that time?
A. Yes, sir.
Q. Where did you go to live then?
A. Right in Fajardo.
Q. And you have lived there ever since?
A. Yes, sir.
Q. You have lived nowhere else?
A. No, sir.
Q. In 1885 you would have been sixteen years old, would you not?
A. Yes, sir.
Q. In 1889 you would have been twenty years old?
A. Yes, sir.
Q. And in 1891 you would have been twenty-two years old?
A. Twenty-two.
Q. What business were you in when you were twenty-two years old?
A. From the time I was fifteen until I was twenty-four I was in business with my father in the sugar business.
Q. And where was your father?
A. In Fajardo; he had a business there.
Q. Was he or was he not the owner of the Convento at that time?
A. Who?
Q. Your father.

A. We never owned Convento.
170 Q. So during all the time from the time you were fifteen in 1884 until you were twenty-four, or nine years later, you were with your father in business. Where is his land?
A. Whose land?
Q. Your father's land.
A. I don't remember exactly that my father had any lands at that time.
Q. You say you were in business with your father.
A. In commercial business.
Q. I put you down as a sugar planter.

A. No, I meant buying sugar and molasses and shipping it to the States.

Q. You say you don't know Josefa Quiñones?

A. No, I don't remember Josefa Quiñones.

Q. Did you know a man by the name of Roberto Huesten?

A. I have heard of him but I never knew him.

Q. He died possibly before you began to recollect things.

A. Perhaps, I have heard of his name.

Q. Do you know whether or not Doña Josefa Quiñones or a woman by that name owned any land in that neighborhood in December, 1880?

A. I never heard of it.

Q. You at that time would have been eleven years old.

A. Probably; when I was eleven years old I was not in Porto Rico.

Q. And I don't suppose you were taking very much interest in the ownership of land at that time.

A. Not at that time; no, sir.

Q. Avelino Rexach, you say you have heard of him but never knew him.

171 A. I have heard a great deal of him but I never knew him.

Q. Then of course you don't know whether or not he owned land in that neighborhood at that time.

A. No, sir.

Q. Then José Maria Flores, you say you have heard of him?

A. I have heard of him.

Q. You don't know whether he owned any land in that neighborhood on the 30th of June, 1878?

A. No, sir.

Q. You would have been only nine years old and would have taken less interest in the ownership of land.

A. Yes, sir.

Q. Did you know Antonio Gotay?

A. In the same way; I have heard of him.

Q. Did you know Andres Avelino Sauri?

A. I have heard of him also; I have never seen him.

Q. You have heard of him but don't know him?

A. No, sir.

Q. Do you know whether he owned any land in that vicinity?

A. I have never heard whether he owned any land.

Q. In other words, you never heard whether he did or whether he did not own any land there?

A. No, sir.

Q. So far as your recollection goes, these parties may have all owned land there or they might not; you don't know.

A. I don't know anything about it.

Q. I think you testified just now that you never heard of Bello Sitio being made up of different parcels, but always as one large estate.

172 A. Since I knew Bello Sitio.

Q. It would be perfectly idle to ask you about these other

names. I don't suppose you heard of Francisco de la Cruz owning land in that neighborhood in 1874, or Ramon Roberto?

A. No, sir.

Q. Or Manuel Guzman in 1865; that was before you were born; or Manuel de Diego in 1862.

A. I never heard of that name in Fajardo.

Q. Or José Ramon Becerril in 1862.

A. I have heard about him but he was a very old man.

Q. But you don't know whether or not they owned land in that neighborhood?

A. No, sir.

Q. You cannot tell whether or not the lands they owned, if they did own any, became part of Bello Sitio.

A. I don't know.

Q. You first became acquainted with it about what year?

A. I began to become acquainted with Bello Sitio after I came back from the States. When I was sixteen I had to go around to the different estates buying sugars and I became acquainted with it when I was in Convento. I had to go through there every day.

Q. When were you there in Convento?

A. From 1892 to 1896.

Mr. LORD: This is not cross examination but we would like to make Mr. Bird our own witness for one question.

Q. You are in charge of the Fajardo Sugar Central I believe, the manager of it.

A. Yes, sir.

173 Q. And have occasion I presume to know the value of sugar lands, the rental value and the actual value of them.

A. Well, more or less, I have an idea.

Q. You are acquainted you say with the land which lies between the Caño Cayures and the Caño Ynea?

A. Yes, sir.

Q. Is or is not that good sugar land?

A. I think that the land has been idle for so many years that it could now be considered pretty good sugar land.

Q. What would the rental value per acre per annum of that land be from June, 1906, this way, per annum?

A. Well, it all depends. Three or four years ago really land was not worth very much. Now since the central was established, the price of land has gone up.

Q. When was your central established?

A. In 1905.

Q. I am asking you about from June, 1906, this way; from June, 1906, to date. What is the reasonable market rental value of land of that kind in that section?

A. I should not think that land of that kind in Fajardo would be worth more than six dollars per acre per year in Fajardo. The best land is only worth eight dollars. The price of rental of land is taken from the product and the average production in Fajardo is only twenty tons.

Q. I am not asking you what the total would be for the total of 400 acres, but if you were about to rent, say 125 or 130 acres, between those two caños, between the Caño Ynea and the Caño Cayures.

174 A. Between the two caños means east and west, but how far to the south, because as the land runs to the south it gets worse; as it gets to the hills it gets worse.

Q. Bounded on the north by Convento and bounded on the east and west by these caños and 130 acres.

A. I should say six dollars a year per acre.

Mr. HORD: That is all.

Witness retires.

175 JOSÉ AVALO SANCHEZ being recalled for cross examination, was examined by Mr. Hartzell and testified as follows:

Interpreted.

Q. Where did you live in 1879?

A. In Fajardo.

Q. In the city of Fajardo?

A. In Bello Sitio.

Q. At that time were you the owner of Bello Sitio?

A. Yes, sir; I was the owner of Bello Sitio.

Q. How many acres were there in Bello Sitio in 1879?

A. The 400.

Q. Did Bello Sitio ever have more than 400 acres?

A. Don Monserrate had more but it was in another jurisdiction.

Q. Did you as the owner of Bello Sitio ever have it comprise more than 400 cuerdas?

A. Lately when I became the owner it comprised what I had bought of Sauri and Quiñones and the widow of Huesten who is bounding on the south.

Q. When you made the mortgage to the widow of Veve, how many acres did it have?

A. 400 because I had not yet purchased of Sauri.

Q. And prior to that time Bello Sitio never had more than 400 cuerdas?

A. 400, Bello Sitio.

Q. Did you make a mortgage of Bello Sitio in 1879?

A. Yes, sir.

Q. Did you sign it?

A. Yes, sir.

Q. Did you describe Bello Sitio in that mortgage as having 600 acres?

176 A. I don't remember.

Q. I don't want to take any advantage of the witness. I call your attention to a document and ask you whether you have any recollection of that transaction (handing a document to the witness).

A. Yes, sir.

Q. Do you recollect that transaction?

A. Yes, as Don Monserrate Garcia owned 600 acres including this which I have stated of the Aldea and Luquillo and when the executory proceedings were executed against him,—they brought executory proceedings against him—and they published in the official gazette as having been attached, 600 acres, and then I bought in the plantation, but upon the judge drawing or executing the deed which appears there, Don Monserrate alleged in the court that the Luquillo and the Aldea cuerdas were not included in the foreclosure proceedings, and then the judge executed the deed in my favor for 400 cuerdas only and the balance were turned over to Monserrate.

Q. Now you never got but 400 acres did you?

A. No, sir.

Q. Then why did you make a mortgage for 600 acres?

A. I will explain. I bought in at public sale the plantation in November, 1876, and the judge executed the deed in the year 1880, and as I had made the mortgage, the notary took as a basis the auction sale or the public sale.

Q. Then at the time you made this mortgage you had no record title at all to this property?

A. No, sir.

177 Q. How was that mortgage registered? Could you explain that, if you had no title to the property?

A. Because in the year 1880 the registry of property was established and as I had made a mortgage in favor of Don Leonardo Planas in accordance with the public sale at which I bought it, they took it to the registry, and afterwards upon executing the deed, he executed the deed for the 400 cuerdas. Don Monserrate said that the Luquillo lands had not been foreclosed. From the auction sale they reduced the price on account of the reduced amount of land. As they had appraised 600 acres and they had only given me 400, they deducted from the price of the sale the balance.

Q. Now when you got it how was it described? Who were the adjoining owners when you got it? Let us have a description of the boundaries when you got the 400 acres that belonged to you. Let us have the boundaries.

A. I don't remember the boundary lines. In the official gazette where the auction sale was advertised, it must appear. It had different boundary lines.

The COURT: Call his attention to the fact that counsel is asking for the description of the 400 cuerdas as it was finally deeded to him. What were its boundary lines; not as he bought it four years before at the 'remate' but as it was deeded to him.

A. On the north the Convento and Isabel Siaca; on the south the Aldea, Pascual Perez and Nieves Perez; and on the west the succession of Huesten. No, on the south was Huesten; and on the east Benigno Santiago, Sebastian Santiago and Jilario Joli.

Q. Who was the western boundary?

A. Nieves Perez and José Lopez at that time.

178 Mr. HARTZELL:

Q. Now were these the same adjoining boundaries at the time you executed the mortgage to the widow Veve?

The COURT: Five years later.

A. Yes, sir; some of them. Some of them had changed.

Mr. HARTZELL:

Q. And the property still contained 400 cuerdas between the boundaries which you have given?

A. Yes, sir.

Q. Have you any map of that property?

A. I had a plan and a survey but Mr. Coll y Cuchi, who was my attorney, went to the States and left that abandoned and I have not been able to get the plans.

Q. You had a map on the last trial, what has become of that?

A. I must have it somewhere.

Q. You haven't got it here now?

A. I haven't got it.

Q. (Handing a map to the witness:) I call your attention to what purports to be a map, marked: Hacienda Bello Sitio; and taking within what are indicated as the green shaded exterior lines I will ask you whether or not that represents in a general way the shape or outline of that Bello Sitio property.

A. Yes, but this includes the other land of Sauri. This includes the whole thing.

Q. Do you know how much land is included within those lines?

A. 500 and odd cuerdas.

Q. 500 and odd cuerdas are comprised in those boundaries?

A. Should be included.

Q. Have you had it measured?

A. Yes, sir.

179 Q. Where is the official measurement and who made it for you?

A. I haven't a certificate of a surveyor. I have measured them myself to plant cane and to pay the laborers, etc.

Q. How did you measure the land?

A. With a string or with a cord or with anything, with a rod of three meters.

Q. Did you measure the whole tract?

A. No, in portions or pieces.

Q. And you are prepared to say that there are over 500 acres, or should be over 500 acres within the perimeters of the boundaries which you have given?

A. Yes, sir: I swear to it.

Q. Now if there is only 400 acres within the lines indicated to you, can you point out to the jury where the other 100 acres would be, that you owned at that time?

A. I didn't own it: the widow Veve owned it. It is about twenty-one years that I have not gone over this ground: twenty-one years that I was deprived of this land without owing one shilling.

Q. Is it twenty-one years since you were out there going over the land?

A. More or less, twenty-one years.

Q. Didn't you swear in that last trial that it was ten years ago that you went out there and saw that a lot of the land had been taken away?

A. To go there is one thing and to live there is another thing.

Q. I asked whether he so testified on the other trial.

A. To go there to the ground and examine the place is one
180 thing and to live on the ground is another thing.

Q. I want to know now whether he did as a matter of fact. He said he did on the other trial. Did you go there one time or several times during the last twenty years? If you did so testify, say so.

A. Yes, I have gone there temporarily to see the trustee and to see what was going on there.

Q. Did you testify on the former trial of this case that you saw where a large amount of land had been lost, that belonged to the widow?

The COURT: This is an impeaching question. Show him his testimony.

Mr. HARTZELL: The proper way is to ask him first whether he so testified, and if he says he did not, then show him the testimony.

A. Yes, sir; but as Mr. Hartzell asked me how long I had not been living there or when I left there, one thing is to live there and another is to go there.

Q. Did you testify on the former trial of this case as follows: The question was asked of you: Could you go today and mark out the land that has been taken there and belongs to this place? To which you answered: It is not necessary to go there. Did you not in answer to the following question, testify as follows: This was the question that was asked you: How much do you calculate has been taken from the land that belonged to this finca, to which you made
the following answer: I don't know, because if ten years ago
181 when I was over there, they had already taken sixty or seventy acres, it is to be presumed that they have taken the balance. Did you so testify on the former trial of this case?

A. Yes, sir; and I repeat it now.

Q. Now then let us know where those seventy acres were taken off of this place; on which side?

A. In my opinion, excepting the lines or the points of the quebrada, from everywhere.

Q. Who has gotten the land? That is what I want you to tell this jury.

The COURT:

Q. Who of the surrounding neighbors have got the land that used to belong to Bello Sitio?

A. All of them with the exception of the Aldea; all the rest have lands of Bello Sitio.

Mr. HARTZELL:

Q. You swear that every boundary owner today has lands that belonged to Bello Sitio, except Aldea?

A. Yes, sir.

Q. That includes Convento?

A. Yes, sir; on one side.

Q. The boundaries have all been changed except Aldea since you turned over this land to the widow or since it was given to the widow?

A. I didn't turn it over to the widow.

Q. Since the widow has had possession of it.

A. Yes, sir; they have been altered.

Q. All have been changed?

A. Changed.

Q. Was Bello Sitio when you sold it, all one piece of
182 ground, when you made the mortgage?

A. No, sir; it was not a mass or an aggregate; no, sir; because Sauri was in the middle; was between.

Q. How many pieces were there to it?

The COURT: Bello Sitio.

A. The eastern lot up to the Ynea Channel; another lot on the south bounded with Doña Dolores Ortiz, which I think is divided by the quebrada, 11½ cuerdas; and next on the western side there lie the half of the 249 cuerdas bought from Don Antonio Gotay.

Q. Then do you mean to say that the land that you are now suing for is in the middle of what was formerly Bello Sitio?

A. Yes, sir.

Q. That is, Bello Sitio is on each side of it?

A. Yes, sir.

Q. Well then, does the land that you are suing for go clear through it from north to south and absolutely separate it into two pieces or not?

A. Yes, sir; it divided it up.

Q. It completely bisects the land.

A. Yes, sir.

Q. Just as much as a road?

A. Yes, sir.

Q. Now the Court and the jury, Mr. Witness, want to understand whether you mean that at the time you made the mortgage to this lady, the other land, this 138 acres that you are now claiming, cut Bello Sitio completely in two from north to south and
183 there was no neck joining the two pieces of Bello Sitio?

A. No, sir.

Q. On the ground.

A. Yes, it divided up Bello Sitio from north to south.

Q. Was there a neck or an isthmus of land left joining the two pieces of Bello Sitio or not?

A. It was clear through.

Mr. HARTZELL:

Q. These two pieces of land at the time you made the mortgage,

which you now say were Bello Sitio, were separated by the so-called Sauri land that you are suing for here now?

A. Yes, sir; the Sauri land.

Q. The Sauri land then would be the eastern boundary of the west part of Bello Sitio, wouldn't it?

A. That is it.

Q. And the Sauri land would be the west boundary of the east piece of Bello Sitio?

A. Of the western part.

Q. It would be the western boundary of the east part.

A. The west boundary is the east of Bello Sitio on one side.

Q. But it was the western boundary of the eastern piece of Bello Sitio.

A. No, sir.

The COURT: If it comes in the middle it must be.

A. The east of Bello Sitio is where the factory was up to the Ynea Channel, up to the Sauri land, therefore the channel is the west and that is the eastern boundary of the Sauri land.

Q. Then the Sauri land comes in west of this Caño?

A. Yes, sir; the western side of the Caño Ynea.

184 Mr. HARTZELL:

Q. What I am getting at is this: If this Sauri land was the eastern boundary of the west piece of Bello Sitio and was the west boundary of the east piece of Bello Sitio, can you explain why the Sauri land was never mentioned in describing the land that you gave in this mortgage?

The COURT: To the lady.

A. It is very simple because we were not dealing with surveys or anything of the kind. When I executed the mortgage in favor of the widow of Veve, I gave the deed to Don José Belaval or to Camuñas, the notary, and he was the man who drew up that with Vaamonde.

Mr. HARTZELL:

Q. Did you give this mortgage according to the same description that you got a deed from Monserrate Garcia?

A. It seems so; it appears so. The only thing you can do is to check up both descriptions and find it out.

Q. Do you know why the Sauri land was not mentoined as a 'colindancia' when you got your deed from Monserrate Garcia?

A. I don't know why the judge did not insert it.

Q. You are an intelligent man. Why didn't you have the right boundaries made when you got your own deed?

A. The judge executed the deed in my favor and in accordance with that deed the mortgage was executed.

Q. Did you read the deed when the judge made it for you and you signed it?

A. I didn't read it; I signed it.

Q. You didn't know what was in it?

A. Yes, I knew that it was the deed for the plantation but I had no use to read the deed.

185 Q. Do you know that he gave the outside 'colindancias' as being the 'colindancias' in your property, the ones you have named here?

A. Yes, sir.

Q. Did you know then that according to that deed you were getting the Sauri land as well as the other land, as well as the other 400 acres?

A. No, sir; how should I know it? I could not take what belonged to others.

Q. When did you ever discover that the mortgage you had made to the widow of Veve had the wrong description in it?

A. I noticed that when they levied an attachment on the plantation.

Q. That was after the mortgage was made, wasn't it?

A. Yes, sir; when this trouble arose. They came to levy the attachment and Vaamonde attached on the boundary line.

Q. Mr. Avalo, the mortgage which you executed to the widow of Veve appears to have been executed in Fajardo on the 28th of May, 1885. Who was present at the time that mortgage was executed?

Mr. HORD: I think the mortgage will show who was present.

Mr. HARTZELL: It might show some of them but I don't know whether it would show all. I want to get the witness' recollection for another reason.

Mr. HORD: I submit it is not a fair question. 1885 is twenty-five years ago and I submit it is not a fair test to ask the witness who was present.

The COURT: He may ask him if anybody was present besides those mentioned in the document.

Mr. HORD: It is an unfair test of the man's memory.

186 The COURT: You might add: Aside from those who signed as parties and witnesses.

Q. Was anybody else present or do you recollect of anybody else being present besides the parties who signed the instrument and the witnesses who signed the instrument and the notary?

A. At the time that I was about to execute that mortgage, Juan Vaamonde was in Europe and Mr. Belaval who was at that time the agent for the house or the firm, he told me that it was necessary to execute that mortgage. During that time Vaamonde arrived from Europe and then I turned over the deed and then the notary notified me to go in town to sign.

Q. Now who was present beside the parties at the time it was signed, if you recollect?

A. The notary sent word to me to come in and sign and I signed.

Q. Now what deed was it that you had delivered to the notary for the purpose of preparing this mortgage?

A. The deed executed in my favor by the Humacao judge.

Q. And was it your intention and understanding that you were

mortgaging the same property that you had received of the Humacao judge?

A. Yes, sir.

Q. Referring again to the plan which was shown to you yesterday.

Mr. HORD: I submit, Sir, if counsel is going to use that plan, it would be best to put his engineer on and identify it.

The COURT: I said so yesterday.

Mr. HARTZELL: We ought to have a plan and he has not presented any. I want to know in a general way whether it
187 represents the outline of the property.

Mr. HORD: My objection is that it puts the map in evidence before it is really in evidence. I am perfectly willing to have counsel put his engineer on and identify the map.

The witness José Avalo Sanchez retires and another witness is called.

Mr. HARTZELL: This is another witness of the defendants, but produced on the same conditions as Mr. Bird, with the understanding that it will in no wise affect any motion that the defendants may make at the conclusion of the plaintiff's case.

188 JOSÉ CASTRO, being called as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. HARTZELL:

Interpreted.

Q. What is your full name?

A. José Castro.

Q. Your age?

A. Forty-three years old.

Q. Where do you live?

A. In San Juan.

Q. What is your occupation?

A. I have an office in Fajardo.

Q. What is your occupation?

A. Surveyor.

Q. How long have you been engaged in that occupation?

A. Eight years.

Q. Where did you receive your education for that business?

A. I got my diploma from the International Correspondence School.

The COURT: Mr. Hartzell, you can't get this Court to give that school a standing.

Q. Were you engaged in the work prior to the time that you started to work for yourself?

Mr. HORD: That is leading I think, Sir.

Q. Well, what study and experience have you had?

A. I have much experience owing to the fact that I have been working in that line for twenty-two years.
Q. With whom did you work before you studied engineering?
A. In the department of public works.
Q. And what character of work were you doing there during that time?
189 A. I made a project for works as culverts, bridges, etc.
Q. Well, was it civil engineering? What was the character of work that you have been practicing since?
A. And surveying also because I went to the field to make surveys.
Q. So that for how long a time do you say now that you have been engaged in the practice of this business?
A. Of surveying or of engineering?
Q. Yes and of engineering too.
A. As surveyor about eight years.
Q. And how long prior to that as engineer?
A. About twenty-two years.

The COURT: The Court will hold him qualified.
Mr. HORD: May I ask him some questions before you hold him qualified?
The COURT: Yes.

Mr. HORD: How long did you work for the public works department?
A. During different times.
Q. In what capacity?

The COURT:

Q. What sort of work did you do?
A. Projects for masonry works.
Mr. HORD: Is that all?
A. And afterwards in private work, surveying.
Q. I am asking you about public works.
A. Masonry works, construction works, projects for construction works.
Q. What you know about surveying you studied at this correspondence school that you mentioned, did you?
A. I had already studied that. The only thing I did was
190 to get a diploma.

Mr. HORD: I submit, Sir, that under the facts as testified by the witness, he is not a qualified surveyor.
The COURT: Some men may be qualified as surveyors without ever going to an engineering school. The jury has heard his qualifications and the counsel may argue to the jury whether or not he is competent.
Mr. HORD: Your Honor will note our exception to the ruling, Sir.

The map in question was then marked: A for the defendants for identification.

Mr. HORD: I want to ask counsel for what purpose he proposes to offer it.

Mr. HARTZELL: I propose to offer it for all purposes.

Mr. HORD: Then I shall have to object when he offers it.

Mr. HARTZELL: I am not offering it yet, but am just having it marked for identification.

Q. I call your attention to a plat which has been marked: A for defendants for identification, and ask you if you know what that is.

A. Yes, sir.

Q. What is it?

A. This is the plan which I delivered for the survey which I made of the plantation Bello Sitio.

Q. Was that plan drawn by you?

A. Yes, sir; it was drawn by me.

The COURT:

Q. When?

Mr. HARTZELL:

Q. When was it drawn?

191 A. During this year.

Q. Who was with you at the time the plan was made?

A. The owners of the property.

Q. Well, who was there? Let us know who was there. Name them.

A. Don Arturo Saldondo, José Vaamonde. This survey was made by judicial order.

Mr. HORD: We would like to have that order.

Mr. HARTZELL: I am the judge who issued that order.

A. And we summoned all the surrounding owners.

Q. Tell us who was there.

A. Don Arturo Saldondo, Vaamonde, Baralt and afterwards all the adjacent land owners whom I had notified previously.

Q. Well can you give us the names of these adjacent land owners? Who was present? Does your plan show their names?

A. In the plan also and in the certificate of survey. Cerra represented the Hacienda Convento.

The COURT: Mr. Witness, you were asked to tell the people who were actually present there.

Mr. HARTZELL: I would like to change that with Your Honor's permission to say who was present representing each of the boundary owners.

Mr. HORD: May the map be closed while he gives them.

The COURT: He may look at the map and refresh his recollection if he desires.

The COURT: Tell him to tell from memory now who were present on the ground and pointed out any boundary lines to him. Who was present representing those boundary owners?

A. Don Domingo Cerra representing Convento and Don
192 Manuel Guzman representing the lands of Doña Isabel Siaca, widow of Rivera; another one representing the succession of Garcia, whose name I don't remember, Gervasio Rivera.

Mr. HORD: Don't read from that map please.

The COURT: He can refresh his recollection from the map. Tell him he may look at the map and refresh his recollection.

A. I have made lots of surveys in Fajardo and I have notified lots of people.

Q. Well, refresh you- recollection from the map if you can.

A. I cannot keep in my mind the names of all the abutting owners of all the land I have surveyed in Fajardo.

Q. Well, the witness may submit his memory from that map. He may not read from the map. Tell him that, Mr. Fano. He may look at that map to refresh his recollection and then he must testify, without reading them, who they are.

Mr. HARTZELL: I have got here the signatures of those who were present, on his notes.

The paper is marked: B for defendants for identification.

Mr. HARTZELL:

Q. (Handing the paper to the witnesss.) I call your attention to this paper marked: B for defendants for identifiification, and ask you what is that.

A. This is the memorandum of the act which we made the day that I went there to make the survey.

Q. Refreshing your recollection from that, state whether the persons whose names appear thereon were present.

Mr. HORD: I want an opportunity to make an objection to this if counsel is going to offer it.

Mr. HARTZELL: I offer it in evidence then now.

193 Mr. HORD: We object to this, Sir.

The COURT: On the ground?

Mr. HORD: On the ground that it is not sworn to. It is a declaration apparently made and signed by ten or fifteen people not under oath, not made by judicial order. It is an ex-parte statement on the part of defendants and it is a self serving declaration because it must be manifest to the Court and everybody that the people who joined would be interested in fixing the boundary lines.

Mr. HARTZELL: I ask counsel if he admits his signature to this notice (handing a paper to counsel for the plaintiff).

Mr. HORD: I admit that we received the notice, but we didn't go and we didn't have to go out there.

Mr. HARTZELL: Now I offer this in evidence.

The COURT: He admits that he received the notice so that is not necessary.

You cannot be permitted to gather all the neighbors around there and be permitted to enter into a conspiracy with them and put this paper before the jury.

Mr. HARTZELL: I propose to present all these colindantes here as witnesses.

The COURT: Then that will be the best evidence. I won't admit that document in evidence.

Mr. HORD: In connection with my admission that we were notified. I wish to state——

The COURT: You will take the consequence of your notice and not going there.

194 Mr. HORD: I think I am entitled to show why we didn't go.

The COURT: You may state it now.

Mr. HORD: It was not a judicial survey, not ordered by the court, and to have gone there would have amounted to going out on the ground to engage in a controversy absolutely fruitless, and there was no authority of law for it.

Counsel for defendants presents another document which is marked: D for defendants for identification.

Q. (Handing the document to the witness.) I call your attention to a document marked: D for defendants for identification, and ask you what that is.

A. This is the certificate of the survey which I issued when I made the survey, bearing the signatures and approval of all the adjacent land owners.

Q. Is this what you call field notes?

A. No, that is the certificate of the survey where you make the description by metes and bounds.

Mr. HARTZELL: I offer the map and the certificate of survey in evidence.

Mr. HORD: We object to them. We object to the map unless it is introduced to show the piece of land that the man surveyed on the date of the survey.

Mr. HARTZELL: That is all we offer it for.

Mr. HORD: We object to the field notes although he doesn't call them field notes but says that they are something else. We object not to the field notes themselves except for the purpose of

195 asking the Court to limit the proof to the existence of the piece of that land at the time that he surveyed it in 1909.

The COURT: This cannot have any other effect except that this man surveyed that land and that these 'colindantes' agreed and that it was correct at that time, and it goes in as illustrative of his testimony.

Mr. HORD: We object to the statement of the signatures and the declaration of the so-called adjoining owners.

The COURT: Do they make any statements except that they attended a survey?

Mr. HORD: Yes, sir; that they agree to it. That is not proper testimony; in the first place it is a declaration not made under oath, and in the second place it is a declaration not binding upon the plaintiff in this case, by interested parties.

The COURT: After you have introduced every one of them. I will hear you on that. That won't be permitted now, but the map will.

That won't be held as evidence that they agreed to that unless you call them to prove it.

Mr. HARTZELL: Then the map and field notes are admitted for whatever purpose may be proper.

The COURT: For the purpose of showing what they did there. It doesn't bind this plaintiff in any way except as the jury may believe that it represented his rights as they existed.

The map and the field notes were then placed in evidence
196 and marked: Exhibits A and B respectively for the defendants.

Q. Who pointed out to you the points from which the lines of this map were traced?

A. The boundary land owners, the adjacent land owners.

Q. How were those points indicated on the ground?

A. By trees.

The COURT:

Q. By trees, rocks, cañons?

Mr. HORD: I ask Your Honor not to lead him.

A. By trees and posts or stakes.

Q. Did you find monuments of that kind in tracing these lines.

A. Yes, sir; they were on the ground and they have been standing there for a long time and of those same points on the boundary line of Convento and Dos Hermanos because I also surveyed Convento and Dos Hermanos. I used those same points when I surveyed Bello Sitio.

Mr. HORD: I make my objection and ask to strike out what other people said to him.

The COURT: The actual pointing out is all that is material.

Mr. HARTZELL:

Q. Did you see the deeds of the various 'colindantes'? Were they shown to you?

A. Yes, sir.

Q. Were those taken into consideration in fixing these boundaries?

Mr. HORD: I object to that, Sir.

The COURT: If he didn't do that, that would be an objection on your part, Mr. Hord.

Mr. HORD: Note our exception to admitting the testimony.

A. Yes, sir; that they brought those deeds and I used them as a basis for defining those lines.

The COURT: That is as far as you can go on that.

197 Mr. HARTZELL: That is as far as I want to go.

Mr. HORD: Those deeds ought to be here in evidence so that we can see what they show.

Q. From the points which were given to you on the ground, I will ask you to state whether or not this correctly shows the extent of that piece of ground.

A. The points being the same; yes, sir; in that perimeter. The perimeter of that polygon that I surveyed there is correct as represented in that plan.

Q. And does the plan with its total of calculations correctly show the superficial area?

A. Yes, sir.

Q. Can you tell from looking at the map what you calculate to be the superficial area of that piece of ground?

A. 415 cuerdas and 15/100.

Mr. HARTZELL: Take the witness, judge.

Cross-examination by Mr. HORD:

Q. Who asked you to make this survey?

A. The succession of Veve.

Q. Which gentleman or which person of the succession of Veve?

A. Mr. Arturo Saldondo.

Q. Anybody else?

A. Nobody who went to see me in the name of the succession.

Q. Where did you begin that survey?

The COURT:

Q. Where, at what point did you begin?

A. From a point which is close or near the Fajardo-Luquillo road.

Mr. HORD:

Q. Did you find any monument there?

A. A post of caobana.

198 Q. How big was that post?

A. A meter and a half.

Q. Just a stick stuck in the ground.

A. Yes, a post driven into the ground near the road from Fajardo to Luquillo.

Q. And that was your beginning point was it?

A. That was the starting point.

Q. Who pointed that out to you as the starting point?

A. Nobody has to indicate to the surveyor the starting point. We do that for ourselves.

Q. Have you ever lived in Fajardo?

A. There is more than four years that I have my office in Fajardo. My family lives in Santurce.

Q. Had you ever lived in Fajardo before that?

A. No, sir.

Q. Did you ever know anything about this tract of land before you were called out there to survey it?

A. No, sir; I didn't know it.

Q. So all the information you got then was that given you by the succession of Veve and the surrounding land owners?

A. Yes, by the adjacent land owners.

Q. And you took their word for it and made the survey according to their indications, did you?

A. And with the deeds of the adjacent land owners.

Q. Now when an adjacent land owner's deed said it was bounded by the Bello Sitio, how did you know where to run the line between the two?

A. The points which they gave me as the boundary points.

199 Q. Yes, the points pointed out by the adjoining land owner.

A. Yes, sir; as soon as they gave me the points, I drew the lines and calculate the distances.

Q. So out on the ground the parties representing the succession of Veve on the one side and the adjacent land owners on the other would say to you: This is the point and that is the direction.

A. Yes, sir.

Q. And you would run the line in the direction in which they said was the proper place for it?

A. Yes, sir; in the direction which the apparatus would give.

Q. Your apparatus would run all around the 365 degrees, wouldn't it?

The COURT: That is argumentative.

Mr. HARTZELL: I did not pretend that he had personal knowledge of these boundary points.

The COURT: The witness himself says that too.

Q. Then in making this survey you knew nothing of your own knowledge but what the succession of Veve and the adjoining land owners told you?

Mr. HARTZELL: He has answered that twice.

A. Yes, sir.

Q. And from no knowledge of your own?

A. No, sir.

Mr. HORD: No further questions.

Redirect examination by Mr. HARTZELL:

Q. Did these deeds of the 'colindantes,' any of them give you points?

200 Mr. HORD: I understood Your Honor to rule that those deeds would be the best evidence.

Mr. HARTZELL: I only want to ask the one question, whether or not any of those deeds gave the fixed points.

The COURT: That would not be fair unless you brought the deeds to show whether they give them.

Mr. HORD: We object to that, Sir, because that is going into the contents of the conveyance and the contents of the conveyance certainly are the best evidence. Counsel has known for months what he was going to prove and it was his business to bring those deeds here and show that they do show the points.

Mr. HARTZELL: I don't want to go into the contents.

Mr. HORD: But you are going into the contents the moment you ask him whether they gave the points. How can we contradict

that testimony? We must let it stand at whatever the witness says it contained. Counsel should have produced these deeds here before the jury.

The COURT: I will let him answer the one question but I will stop him there.

Mr. HORD: Your Honor note our exception?

Mr. HARTZELL: That is the only question I want to ask him.

Q. (Was repeated to the witness by the Interpreter.)

A. Yes, sir; they fixed the points.

Mr. HORD: Now Your Honor leaves me in the position of having to inquire what they were.

The COURT: You have got the benefit of his testimony that he took the points that they showed him.

Witness retires.

201 JOSÉ AVALO SANCHEZ being recalled for further cross examination, was examined by Mr. Hartzell, and testified as follows:

Q. (Handing a map to the witness.) Mr. Witness, I call your attention to an instrument marked: Exhibit A for defendants, which purports to be a plat of the property Bello Sitio.

The COURT: As it exists at the present time.

Mr. HARTZELL: As it exists at the present time.

The COURT: Look it over and see if you recognize it.

A. It represents it but the scale in feet does not represent the area of the property.

Mr. HARTZELL: I understand. That is the dispute in the case, but that is not what I am getting at. Does it correctly represent the shape of it?

The COURT: Tell him to look at it and tell the jury whether from his knowledge of the outline of that land, it correctly represents the shape of it.

A. Yes, it is so; yes, sir; that is the outside exterior lines.

Mr. HARTZELL:

Q. Does it correctly show the adjacent owners at the present time as far as you know them; not the boundaries but the owners?

A. Yes, sir; it represents them.

Q. Now then point out to the jury on this map where is this 138 acres that you are claiming in this suit.

A. On the southern end of the map, the irregular line is the caño or quebrada; on the nort-west corner of the map the irregular line is the Caño Cayures; on the eastern side of the middle of the map the stream indicated is the Caño Ynea.

202 Q. Now with reference to those caños where is the land?

The COURT:

Q. Where is this 138 acres of land?

A. The land I claim is situated west of the Quebrada Fajardo here (indicating).

Mr. HARTZELL:

Q. What I want to get at is this: Is the Convento the northern boundary of the piece you claim?

The COURT: Point out your property on this map if you can.

A. There is 24 acres of my land here west of the Caño Fajardo on the main portion of this map. It is called Pieza Moravil. And up here in the north center end of the map east and west of the Quebrada Fajardo is other land.

Q. Does that bound on the Convento?

A. Yes, sir.

Q. Ask him if he could take a pencil and indicate in a general way where his land is?

A. The first I marked near the quebrada is 24 cuerdas of my land, and the next one is 26, and the 'sobrante.'

Q. How much is in the 'sobrante'?

A. 124 cuerdas.

Q. Show the boundary lines of that with a pencil.

A. (Witness indicates on the plan with a blue pencil).

Q. Where is the west line of this biggest tract on the north?

A. The Caño Cayures is the boundary line of my land on the west and then the road on the south of that.

Q. Where is your line on the east?

A. There is a trail there?

Q. Does it run up to the Convento? Is that your north boundary?

A. Yes, sir.

203 By agreement of counsel, the Court makes the following statement: The Court required the witness to stand up before the jury and there on the map he traced the property he claims. Twenty-four acres of it he pointed out as being west of the Quebrada Fajardo and twenty-six additional acres directly west of that, and then a tract of seventy-four or seventy-five acres on the north, the whole tract being somewhat the shape of an irregular letter T, and indicated that the Bello Sitio was east of that letter T and west of that letter T as indicated on that map, and that the lands he claims, divide this map in two, throwing a portion of Bello Sitio to the right and a portion to the left.

Mr. HORD: My recollection of the seventy-five acres is not as Your Honor stated it.

The COURT:

Q. You say there were 26 cuerdas and 24 cuerdas of the two pieces west of the Quebrada Fajardo. Now how many cuerdas were there in the upper piece that ran clear across the north end?

A. The balance between 50 and 124.

Q. Where are those other pieces of six acres, four acres and three acres?

A. (The witness indicates on the extreme northeast corner of the letter T).

Mr. HARTZELL:

Q. Now let us have your own description of this piece of 124 acres; the 'colindantes.'

Mr. HORD: He has done that very fully and that appears in the conveyance.

The COURT: It is in the deed. The deed itself is the best evidence.

204 Mr. HARTZELL: I want to find out whether this witness today can describe that land from his memory.

The COURT: He may answer the question.

Mr. HORD: Note an exception.

Q. (The question was read by the Stenographer).

The COURT:

Q. When you got title to it, what were the boundaries?

A. That is shown on the deed.

Q. We understand that but can you name them quickly?

A. Yes, sir; I remember. I remember very well.

Q. Tell them.

A. On the north by Convento; on the east by the Ynea Channel; on the south by the Aldea and the Quebrada Fajardo and on the west by the Caño Cayures and the plantation Bello Sitio.

Mr. HARTZELL:

Q. That is exactly what I want to get. The deed of Gotay to Monserrate Garcia and Sauri was made in 1858 I believe.

A. Yes, sir.

Q. According to the record, that was registered in 1902. Is that your recollection?

A. Yes, sir.

Q. Did you make a petition for the registration of that document to the registrar at Humacao?

A. Yes, sir.

Mr. HARTZELL: I want to identify that.

The document was then marked: E for defendants for identification.

The COURT: Are you proposing to introduce some of your own case here?

Mr. HARTZELL: It is very material. It is a petition that he
205 made to the registrar of property in 1902 with regard to this old deed made in 1858, to get that deed registered.

Mr. HORD: I don't know what this is for. The deed itself shows the inscription, and anyway this is not the proper time to introduce it.

Mr. HARTZELL: I only ask to identify it now.

Q. Can you tell what the document is?
A. This is a certificate from a registrar.
Q. Do you recognize that as being a copy of a petition that you made to the registrar?
A. Yes, sir.
Q. You made that petition to the registrar?
A. Yes, sir.

Mr. HARTZELL: I wanted the fact that he made it. Now I am going to offer it in evidence.
Mr. HORD: I object to it at this time.
The COURT: Make your own case later on.
Mr. HORD: It is irregular but I withdraw the objection.

Q. Were you acquainted with the description of this land as contained in the Gotay deed?
A. I knew it when I saw the deed because there were old people whom I did not know.
Q. I will ask you to state the object of making this petition to the registrar for the change in the description which you made.
A. I didn't file that petition to change the description.

Q. No; well what was the object of filing this petition to
206 the registrar?

A. I presented the Sauri deed for inscription or registration and the registrar told me that I had to bring or produce the old deed from Gotay in order to register it in favor of Gotay and Sauri so as to afterwards inscribe the half interest of Avelino Sauri in my favor.
Q. I understand that. Now why didn't you just present to him the Gotay deed and ask him to inscribe it then? What was the object of this petition?
A. Because the registrar told me to do it so. There is the deed which I presented. I had to file that petition. It was necessary to file that petition. I presented the Gotay deed and afterwards he registered it.
Q. Why wouldn't the registrar accept the Gotay deed?
A. I don't know. I don't know the law and I don't know what reasons he had therefor.

The COURT: What is the purpose of this?
Mr. HARTZELL: Our contention is that the Gotay deed had a very indefinite description.
The COURT: Haven't you got the deed?
Mr. HARTZELL: Yes, it is in evidence. And that he presented a petition stating that the boundaries were in a certain way that does not correspond to the Gotay deed.
Mr. HORD: There is a legal reason for it which we will want to argue to the Court.
Mr. HARTZELL: Was this deed admitted in evidence?

The COURT: I understand that he withdrew his objection
207 and that it is admitted.

The document was then placed in evidence and marked: Exhibit C for the defendants, and counsel read it to the jury.

Q. Now I ask you to take this map and point out those people that you have named here in this petition. I will read the 'colindantes' and you tell where they are. On the north by the plantation Convento. Point it out to us.

A. (The witness does so).

Q. Lands of Don José Avalo Sanchez on the north.

A. On the north?

The COURT: Tell him what this is you are reading from.

Mr. HARTZELL: It is from the petition that you made in 1902 asking for the inscription of this Gotay deed and these are the 'colindantes' you gave. Now you have said that it was bounded on the north by Convento and lands of yourself and Doña Isabel Siaca.

A. Here on the north is Convento and Isabel Siaca (indicating).

Q. Did you have land south of her? If you named her as a north boundary line, where was any land of yours south of hers?

A. Here (indicating on the plan).

Q. Where is Isabel Siaca and where is Convento?

A. Here (indicating).

Q. Now where did you have land south of that?

A. Here (indicating).

Q. You claim that?

A. Yes, sir.

Q. Now where are your lands on the north?

A. Here (indicating), because that belonged to me.

208 Q. This is in 1902; we want to bear that in mind all the time.

The COURT: That is not quite fair. He was referring back to an old deed.

Mr. HARTZELL: No, but he says that the present boundaries were as follows in 1902.

Q. Now on the south by Don Tomas Garcia.

A. That is Jilario Soto who purchased.

Q. Jacinto Torres and Nieves Perez.

A. Here (indicating); Nieves Perez reached this point.

Q. Was he on the south of you then?

A. Yes, sir; he made a corner there.

Q. Then this map is wrong when it indicates that this is Jilario Soto over there?

A. Nieves Perez reached up there; he might have sold.

Q. Now on the south by Don Manuel Camuñas. Where was Don Manuel Camuñas bounding you on the east of that?

A. He had bought seven cuerdas there (indicating). That is my east side.

Q. Rivera Bros.

A. Here (indicating).

Q. Isn't this part of Bello Sitio?
A. Yes, but Rivera Hermanos is the same Siaca.
Q. Dos Hermanos, isn't that Rivera Bros.?
A. Yes, sir.
Q. Now how did that bound you on the east anywhere?
A. There is the boundary line (indicating). There is the north on that side, but on the east on this side.
Q. And your land didn't come up to the Siaca's land?
209 A. Yes.
Q. And the Caño or Channel Ynea, that is this channel here (indicating); and on the west by Doña Concepcion Garcia. Where is her land on the west of your piece?

Mr. Hord: Explain to him that it was the 249 acres and not his piece that counsel is talking about.
Mr. Hartzell: Certainly.

Q. Where is Concepcion Garcia?
A. I don't remember well; some portion of land here (indicating).
Q. Where is Gervasio Rivera?
A. That is Gervasio Rivera (indicating), but it does not reach this line.

Mr. Hord: This is not fair. In that petition which counsel is asking about, he is giving the boundaries of the 249 acres.

The Court: Mr. Sanchez, explain to the jury right here where that 249 acres of land, which was divided and of which you got the 124, was situated. Show where it stood altogether.
A. (Witness indicates).
Q. Was it Convento?
A. On the boundary line of Convento. This is Convento (indicating).
Q. I don't understand yet. Did that 249 cuerdas have a name itself and what was it called?
A. Convento.
Q. This land that you are now claiming here in this suit was formerly a part of Convento was it?
A. No, sir.

A Juror:

Q. The other 124 cuerdas, where was that?
210 A. On this side (indicating).

The Court:

Q. Mr. Sanchez, tell us where that 249 acres was originally, on that map if you can tell us.
A. Here (indicating).
Q. Then it went to form part of Bello Sitio afterwards?
A. Yes, sir.
Mr. Hartzell: Now I want to ask this question: In presenting

this application to the registrar of property in 1902 after Bello Sitio had been foreclosed——

The COURT: Make your question shorter.

Q. In 1902 when you made the application to the registrar for the inscription of this piece of property and gave him what you said were the actual present boundary limits, why didn't you give Bello Sitio as being one of the boundaries of that property?

A. It appears in the deed.

The COURT: He doesn't understand the question.

Q. In 1902 after the property had been foreclosed under the mortgage and gone to the widow of Veve, Bello Sitio was the eastern boundary of this property according to your own showing. Why didn't you give that as one of the boundaries?

Mr. HORD: I object because the witness at that time was claiming Bello Sitio and he says that he himself bounded the 249 acres on the east, and if he was claiming Bello Sitio at that time, it seems to me that that is perfectly plain.

Q. Why wasn't Bello Sitio mentioned at all in this description? It is clear that it was all around it.

A. I took the deed to the registrar and in the deed is the
211 description with Bello Sitio east and west.

Q. Why didn't you mention it in this petition where you described the boundaries?

A. The clerk of the registry made the petition. Perhaps he made a mistake in copying it from the deed.

Q. But you had to give him that description didn't you in order for him to write it?

A. No, he had the deed in the registry.

Q. In this petition you say these are the present boundary limits and different from the old ones. Now how did he get the present boundary limits?

A. Not different from the old ones. They are the same it had and those it now has. The only change has been in the Aldea; it belonged to some party and now it belongs to another. That didn't affect the registration.

Q. Now in the Gotay deeds the Quebrada Fajardo is mentioned as one of the boundaries of this Gotay land.

A. Yes, sir.

Q. Now in that deed the Ynea, which is the eastern one of these quebradas, is not mentioned. Now in the description which you presented to the registrar, or which you say he drew, you make the Ynea one of the eastern boundaries.

A. Because Monserrate Garcia, the owner of the plantation, thought it convenient to take more land on the upper side and he exchanged with Sauri and took more lands on the upper side.

The COURT: I cannot for the life of me gain any benefit from this examination and I don't see how a jury can.

212 Mr. HARTZELL: In the deed to them of the Gotay land in 1858, this Quebrada Fajardo, which is the west one of these two quebradas, is mentioned as one of the boundaries. The

Ynea is not mentioned in that deed. Now in the application which he presents to the registrar for the registration of that deed, the Ynea is mentioned as the eastern boundary.

The COURT: Take the two documents and argue that to the jury when you get to it, but the man has given the whole explanation that he can about it.

Mr. HARTZELL: If Your Honor is getting impatient about it, I will not proceed with it any further.

The COURT: I do think you have gone far enough with it, Mr. Hartzell.

Q. The deed from Sauri to yourself was made by whom?

A. Don José Maria Cuadra.

Q. Who was present when it was drawn up?

A. The persons shown on the deed.

Q. Where did he get the description which he put in that Sauri deed?

A. As it belonged to him, he knew which were his boundary lines.

Q. Did Sauri have the description made for that deed? Did Sauri give the description to the notary for that deed?

A. Yes, sir.

Q. Did he give him any deed or document showing the description or did he give it to him verbally?

A. Verbally.

Mr. HARTZELL: He verbally told him the description. That is all, if Your Honor please.

213 Cross-examination by Mr. POVENTUD:

Q. Now please tell to the jury who inscribed that deed for you.

Mr. HORD: The instrument is here; it is in evidence showing who registered it. (Referring to Exhibit C for plaintiff). There it is, Francisco Porrata.

Q. Now when did Avelino Sauri die?

A. I don't know. It is a long time ago.

Q. Can you tell why Avelino Sauri did not execute a deed to you in 1885 when you say you purchased from him by private document?

A. Because he wanted to have a guaranty for his money.

Q. Wasn't this fellow Sauri a relative of yours?

A. Yes, sir.

Q. And you said he rather preferred to remain with the title to the land instead of trusting you and giving you the deed?

A. We had no interest to draw up the deed. It was sufficient, the document which he gave me.

Q. Now those 249 acres that Gotay sold to Avelino Sauri and Monserrate Garcia you say they were partitioned between Sauri and Garcia, were they not?

A. Yes, sir; in 1874 they divided them up.

Q. Did you witness the material division of that land between them?

A. No, sir.

Q. Who told you that it was materially divided?

A. They told me so because when I took charge of the plantation, Don Monserrate pointed out to me what was Bello Sitio and what belonged to Sauri.

Q. Did Sauri ever tell you that?

A. Twenty times.

Q. And where was Sauri when you took possession of
214 Bello Sitio in 1874?

A. I think he was in Caguas or Ciales; I am not sure; he was secretary or mayor.

Q. Did Sauri ever take possession of those lands?

A. Of course if he had a deed and he didn't sell them to anybody.

Q. I mean actual possession.

A. Yes, sir; Don Antonio Gotay gave it to him when he purchased.

Q. Did you see him take actual possession?

A. I was not in Fajardo at that time in 1858.

Q. So in fact the possession of the 124 that you got of Sauri was never delivered to him.

A. Yes, sir.

Q. Didn't you say that you never saw him in actual possession?

A. I didn't see him in actual possession because I didn't live there.

Q. So the one who gave possession was Monserrate Garcia, was it?

A. Yes, sir; but he afterwards came over and delivered it to me.

Q. What is the date of that delivery to you by Sauri?

A. In the year 1874.

Q. Is that the very year that you went there as manager of Bello Sitio?

A. Yes, sir; that year.

Q. At that time who was the owner of Bello Sitio?

A. Monserrate Garcia.

Q. And had he formed Bello Sitio of 400 cuerdas?

A. Yes, sir.

Q. Can you explain to the jury, Mr. Avalo, why is it that in the deed of mortgage which you made before the year 1880 to Planas and in the subsequent deed to Mr. Belaval and Mr. Planas,
215 guaranteeing the true performance of their duties as registrar of Humacao, and in the mortgage to Mrs. Diaz and in the sale to Mrs. Diaz of Bello Sitio, you and nobody else has ever mentioned Sauri as an abutting or adjoining owner?

Mr. HORD: I object to that. He is asking a question of the witness based upon facts that have not been proved in evidence.

The COURT: Yes, that is true.

Mr. POVENTUD: This is the deed of adjudication of December 15, 1891.

Mr. HORD: My objection to the question is this: It is based upon the assumption of facts which have not been proved. I repeat it

again, there is in evidence a mortgage and the deed of the court, but there is not a word in this court of evidence to show the other facts which counsel refers to.

The COURT: It is not cross examination anyway. I will not go into those side issues.

Mr. POVENTUD: I note my exception.

The COURT: Proceed with other examination. It would not throw a bit of light on this case.

Q. Now, Mr. Avalo, have you ever paid any taxes on those 124 acres?

A. They were paid by the product obtained.

Q. Have you ever paid any taxes on those 124 acres is the question.

A. Yes, sir.

Q. As part of Bello Sitio?

A. Yes, sir; as part of Bello Sitio and not forming part of Bello Sitio. We filled in the tax rolls showing the yieldings of the property.

216 Q. Did you pay taxes in 1895?

A. Yes, sir.

Q. Didn't you say that you were incapacitated to administer your property from 1891?

A. Yes, sir; I was mistaken.

Q. So the last time you paid taxes on that was in 1891 wasn't it?

A. 1890 or '91. I don't remember.

Q. And in 1895, did you pay for that?

A. No, sir; I have not paid anything, not a cent.

Q. How did you pay the taxes in 1891?

A. Paying them in the city hall in the town at the place where they were paid.

Q. In the statement of property that you made to the Alcaldia at those times, did you describe the 124 acres as separate from the Bello Sitio or not?

A. In the bankruptcy proceedings?

Q. No, in the 'planilla.'

A. I think so; I don't remember. It made no difference to put more or less because it was the product which the customs used to make up the taxes.

Q. You spoke here in your examination by Mr. Hord as to a certain lease which you made of these 124 acres before you bought them.

A. Yes, sir.

Q. Now in what year was that lease?

A. 1874.

Q. For how long?

A. For ten years.

Q. How did you enter into that contract of lease with Mr. Sauri?

A. A private agreement.

217 Q. Was there any private writing?

A. Yes, sir.

Q. Signed by you and Mr. Sauri?

A. Yes, sir; and Don Monserrate.
Q. And where did you sign it?
A. In Fajardo.
Q. Do you know who was present at that signing?
A. I cannot remember thirty years or forty years back.
Q. And at that time they had already divided the property: Sauri and Garcia?
A. Yes, sir; when I leased it, it had been divided already.
Q. What did you pay him for it?
A. Four hundred pesos per annum.
Q. Now from the year 1858 up to the year 1874 when you leased those lands, who was the manager of those lands? Who was in possession of them from 1868 to 1874?
A. I was not in Fajardo at that time.
Q. And you came there just for the sole purpose of taking possession of those 124 acres as lessee did you not?
A. No, sir; I was as manager in Dorado in the plantation Santa Teresa. I became acquainted with Don Monserrate and here in San Juan at the Esquiagas' house we talked about it and I went to Fajardo and we made some arrangements.
Q. You said that Garcia and Sauri had made a partnership for the administration of those 249 acres.
A. No, sir; Sauri had turned them over to Don Monserrate in partnership to work those lands and give him one-half of the produce obtained, and the other half went to form part of Bello Sitio.
218 Q. Now were those 249 acres divided by Sauri and Monserrate Garcia from north to south or from east to west?
A. From north to south.
Q. And the western portion of it became part of Bello Sitio and the other part of Sauri, wasn't it?
A. Yes, sir.
Q. Now, Mr. Avalo, had you ever been in bankruptcy before the time they put you in bankruptcy in 1891?
A. Yes, I had been declared a voluntary bankrupt.
Q. About what year was that?
A. I think it was in 1884.
Q. Was that before you mortgaged to Mrs. Veve?
A. Yes, sir.
Q. And in the schedule of properties that you filed there voluntarily, did you describe these four parcels that you claim now?

Mr. Hord: I submit, Sir, that the testimony shows that he bought this land after he made the mortgage to Mrs. Veve in 1885.

Mr. Poventud: No, but the little pieces: the three acre tract that he bought of Rexach was in 1878.

The Court:

Q. That time that you were a voluntary bankrupt, did you describe those little tracts of land in your schedules?
A. That was done by lawyer Arturo Aponte and they had no meeting of creditors at all.

Q. Then it did not amount to bankruptcy.

A. It was only to stop foreclosure proceedings by Mr. Belaval of some promissory notes which I did not owe to him. I then went to Humacao to see lawyer Aponte.

219 Mr. POVENTUD:

Q. Now in this other bankruptcy in 1891, do you know who were the creditors who made the application to the court to make you a bankrupt?

Mr. HORD: That ought to be shown by the record.

The COURT: Yes, but he may answer that.

A. Vicente Balbas.

Q. Was he the only creditor?

A. And Sabas Roquefort.

Q. Those were the only two creditors?

A. Yes, sir.

Q. Did you have any meeting of creditors?

A. No, sir; never did the judge call for a meeting.

Q. Then no other step was taken except that they filed an application?

A. And to take possession of the property.

Q. And then dismissed it?

Mr. HORD: I object to that. I think the record shows. These records are in the district court and can be brought here, or certified copies of them.

The COURT: You have got enough of that.

Q. Those six acres of land that you bought from Manuel Flores, was this Manuel Flores present at the time of the execution of that private document to you or not?

A. I think he was present or his son. I think Manuel Flores was present.

Mr. POVENTUD: That is all.

220 Redirect examination by Mr. HORD:

Q. Before you bought from Don Monserrate Garcia, I understood you to say that the land owned by him was known as Bello Sitio.

A. Yes, sir; Bello Sitio.

Q. How many acres or cuerdas were there in the land owned by Monserrate Garcia, known as Bello Sitio?

A. 400 they said.

Q. After you bought the 400 acres from Monserrate Garcia by what name were they known?

A. Bello Sitio.

Q. Now before you bought the land of Sauri and these other three small tracts of land, by what name were they known?

A. Convento.

Q. Did they have any other names?

A. Flores, Rexach, Quiñones, because it belonged to them.

Q. Now after you bought them all and after you had the 400

acres of Monserrate Garcia, was there or not any general name given to all the lands owned by you at that place?

A. Yes, sir.

Q. What name?

A. Bello Sitio.

The COURT:

Q. You want the jury to understand, Mr. Sanchez, that when you bought Bello Sitio as you want it to be, it was in two pieces?

A. Three with a small lot of eleven cuerdas.

Mr. HORD: No further questions.

The COURT:

Q. Do you know when you mortgaged this land to this lady, if she or her agents or anybody knew that the land was in two pieces and that that middle piece formed no part of Bello
221 Sitio, and if so, how do you know it?

Mr. HARTZELL: As to anybody that is alive, it might be well. We don't want to raise a captious question, but the widow is dead and she cannot testify and her attorney in fact is dead, and he has described, and Your Honor will recollect that I went into the question of who was present, as far as you would let me, but I don't think with the widow and her attorney in fact both dead, that it is proper to ask him what they understood.

The COURT: That is one of the misfortunes of life.

Mr. HARTZELL: It is impossible to rebut it.

The COURT: I withdraw the question.

Mr. HORD:

Q. At the time that Don Monserrate Garcia owned these four hundred acres that you bought from him, did he or not own other lands in that neighborhood?

Mr. HARTZELL: I object to that. We have been over that already. It is not rebuttal.

The COURT: Why haven't we been over that already?

Mr. HORD: If it is in evidence that Monserrate owned other land, then I will withdraw it.

The COURT: Yes, that is all well in evidence.

Q. The other lands which Monserrate Garcia owned in the jurisdiction of Luquillo, on which side of the land of Bello Sitio were they; on the east or west or north or south?

A. On the west.

Q. Where did Monserrate Garcia live at that time?

A. In one of those farms; after he turned over the plantation to me he went to live in one of those farms.
222

Q. In the Luquillo jurisdiction?

A. Yes, sir.

Mr. HORD: That is all.

Recross examination by Mr. HARTZELL:

Q. Was he a 'colindante'; was his land adjoining there?
A. Yes, sir.
Q. And was that so when you bought this land from him?
A. Yes, sir.
Q. And was that so when you made the mortgage to the widow?
A. Yes, sir.
Q. Then why wasn't he named as a 'colindante' in any of those deeds?
A. I will explain that.
Q. Yes.
A. When the creditors brought foreclosure proceedings against Monserrate Garcia in the six hundred cuerdas which he owned, he went to Humacao, he spoke to the judge and he made a compromise with his creditors and they deducted something from his debt and they left him those lands and the sixty and odd cuerdas of the Aldea.

The COURT: Is that all?

Q. Well, I still wonder why he was not named as a 'colindante' when this deed was made.
A. Because it appears that he put it in the name of one of his daughters, Concepcion Garcia. He made the deed in the name of his daughter so that they could not be reattached again.
Q. Does the name of his daughter appear here as one of the 'colindantes'?
223 A. Yes, sir.
Q. What was the name of his daughter?
A. Concepcion Garcia.

Mr. HARTZELL: That is all.

Witness retires.

The jury retires from the court room while counsel for the plaintiff makes a motion to the Court.

Mr. HORD: I move again the admission of the statement of the widow of Veve and Juan Vaamonde Lopez which was offered yesterday. I have no further evidence to offer.

Mr. HARTZELL: Counsel for the defendants at this point move the Court either to take the case from the jury and discharge the jury or to direct that the jury return a formal verdict in favor of the defendants in this case for the following reasons:

(1). Renewing the motion which was made at the commencement of this trial for the dismissal of the case on the ground that the statute of limitations or prescription had run against the claim in question, and upon the grounds that it appeared on the face of the complaint that plaintiff's complaint was based upon transactions and matters which had been fully passed upon and adjudicated by the Spanish and insular courts of Porto Rico. Defend-
224 ants' counsel likewise now moves the Court to take the case from the jury as aforesaid for the additional reason that upon the consideration of the entire testimony as introduced to sustain

the case, it appears affirmatively by the plaintiff's own testimony that the premises in controversy herein were sold and transferred as an entire tract within a given perimeter; that the plaintiff himself has testified that the adjoining owners were and are the same as was shown on the map produced, and that under the law the defendants and their ancestor became entitled to have and receive the premises correctly described in the deed submitted in evidence regardless of the question of the quantity of acres which might be so contained.

The COURT: The motion is overruled.

Mr. HARTZELL: The Court overrules the motion, to which counsel for the defendants then and there duly excepts.

Mr. POVENTUD: Note our exception also to the overruling of the motion.

The COURT: Judge Hord's motion is overruled.

Mr. HARTZELL: For the purpose of getting the record straight on my motion which I made verbally before the noon hour, I desire to put into the record before going into the testimony of the defense, several points which were not covered by my oral statement, upon which we base our motion at this time.

The COURT: Leave that with the Stenographer.

225 Mr. HARTZELL: I haven't got it in shape to give to the Stenographer and I want to dictate it to him. The point is this, in addition to the grounds stated this morning: Counsel for defendants move for an instruction to the jury for the defendants upon the following grounds: That the title of the defendants, first of the mortgage appears inscribed in the registry of property in 1885 and afterwards the title by deed from the court on foreclosure appears inscribed in the registry of property in 1891. That the only inscription relating to the different pieces of land now claimed by the plaintiff in this case appear to have been registered for the first time in 1902, and that in accordance with section 25 of the mortgage law to the effect that recorded instruments shall be effectual against third parties only from the day of registration, the subsequent inscription of these separate parcels as against prior inscription under the mortgage and the deed from the court cannot be effective. That it appears from the evidence that the deeds covering these tracts of land claimed by the plaintiff were not recorded until 1902. It is shown by the evidence that the defendants in this case were not parties to the transaction leading up to the alleged title of the plaintiff, and that such title being unregistered

226 and not recorded until subsequent to the registration of the title of the defendants, cannot prejudice the defendants under paragraph or section 23 of the mortgage law to the effect that all kinds of registerable instruments which are not duly recorded or entered in the registry, cannot prejudice third persons, and that as to that transaction, these defendants and their ancestor were third persons.

That the title covering Bello Sitio, which appears as described in the mortgage to the widow Veve, and the sale to the widow Veve cannot be attacked or held to be false or null until, under the pro-

visions of section 34 of the mortgage law, they have been attacked and set aside in a separate action for that purpose, and that these defendants, being third parties to the transaction under which the plaintiff claims to have acquired subsequent title to the properties in suit here, the title duly registered of these defendants cannot be attacked. In that, if the Court should permit that by the verdict of the jury or the judgment of the Court, the title of the defendants to be attacked or taken away under a procedure of this character, it would be a direct violation of section 34 of the mortgage law to the effect that instruments or contracts executed or covenanted by a person who has a right thereto, shall not be invalidated with regard to third persons, after they have once
227 been recorded, although later the right of the person executing them is annul-ed or determined by virtue of a prior deed not recorded, without having first brought a separate suit to attack that title. And also under another section of the mortgage law to the effect that if Bello Sitio consisted of separate parcels of land, then there was such a misdescription as cannot at this time be harmonized.

That as to the mortgage in this case, if the case should be permitted to go further under the evidence that has already been introduced here by the plaintiff in an attempt to show that there are separate parcels of land, it would be in direct violation of section 61 of the regulations of the mortgage law to the effect that in case of a mortgage of different parcels of land, the amount of the mortgage must be distributed among those parcels and that the parcels must be separately described and recorded in the registry of property.

The COURT: The motion is overruled for the reason that the question here is entirely one of identity of land and there is no attack made by the plaintiff upon his mortgage to the defendants or any land therein mentioned, and because it is matter for the jury to say whether or not on the evidence the mortgage to the defendants' predecessors in interest did or did not include
228 the land that he is now claiming, and if it did not include it, whether or not any statute of limitations, under instructions of the Court, has or has not run in favor of the possession of the defendants therefor.

Mr. HARTZELL: We note an exception.

The COURT: Save the point for Judge Hord on the overruling of the renewal of his motion.

229 *Testimony for the Defense.*

MANUEL GUZMAN BENITEZ being called as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. HARTZELL:

Interpreted.

Q. What is your full name?
A. Manuel Guzman Benitez.

Q. Where do you reside?
A. In Fajardo.
Q. What is your occupation?
A. Manager of the plantation Dos Hermanos of my mother in law.
Q. Are you acquainted with the premises in that vicinity known as Bello Sitio?
A. I know it.
Q. How long have you been acquainted with those premises?
A. Many years ago.
Q. How many?
A. Since I was a young boy.
Q. And what is your age?
A. Between forty-nine and fifty years of age.
Q. Is the property Dos Hermanos an adjoining property to Bello Sitio?
A. Yes, sir.
Q. On what side?
A. On the south and west.

The COURT:

Q. Well which is which? Do you mean that Bello Sitio is south and west of it or is it south and west of Bello Sitio?

This question was withdrawn and was not answered.

Mr. HARTZELL:

Q. I call your attention to defendants' Exhibit A which
230 appears to be a plat of Bello Sitio, and ask you whether you can recognize the property from that plan.

The COURT:

Q. Have you ever seen that map before?
A. I have not seen this.

Mr. HARTZELL:

Q. Now examine that plat and see whether or not it describes the boundaries of Bello Sitio as you know them. Where is Dos Hermanos according to that plat?
A. (The witness indicates on the northeastern corner and eastern side of the map.)
Q. Now is that a correct description on that map?
A. It should be correct. I have my plan here.
Q. You have your plan of what?
A. Of the plantation Dos Hermanos.
Q. Have you the deeds of Dos Hermanos?
A. Yes, sir.
Q. Well, before we come to that; do you know of the boundaries of Bello Sitio outside of the one of Dos Hermanos?
The COURT: The other points.
A. I don't know them all. I know this one here (pointing to Dos Hermanos), and I know the one on the north, Convento.

Mr. HARTZELL:

Q. Do you know who are the other adjoining owners?
A. No, sir; I don't know.
Q. Now in the time that you have been acquainted with Dos Hermanos and Bello Sitio, has there ever been a change in the boundary lines?
The COURT: Between the two.
Mr. HARTZELL: Between the two.
A. No, sir; none at all.

Q. Has Dos Hermanos ever at any time acquired any por-
231 tion of the property within the lines of the original Bello Sitio?
A, No, sir.

The COURT:

Q. How many years have you lived around there?
A. In Fajardo more than thirty years.

Mr. HARTZELL:

Q. And how long have you known that boundary line?
A. I might say since Dos Hermanos was established.
Q. About how long ago was that?
A. Near twenty-two or twenty-three years.

The COURT: Now, Mr. Hartzell, ask him if there is anything on the ground to indicate them.

Mr. HARTZELL:

Q. Are there any marks on the ground to indicate where the boundaries between those two fincas are?
A. The points.
Q. Anything to indicate?
A. Yes, sir.
Q. What is there to indicate those points?
A. There is a jobo stump on the southeastern corner, a cohovana and almacigo tree; first cohovana, second jobo, and afterwards a post or stake and after the post and the almacigo tree, an iron post.

The COURT:

Q. What other points? Go around the line.
A. No more; five or six; that is all.
Q. Are those strung out along the line or are they all in one place?
A. No, they are along the line.

Mr. HARTZELL:

Q. How long have they been there, do you know?
A. Since they bought those properties; after they surveyed them.
Q. Are they described in your deeds of Dos Hermanos?

232 Mr. HORD: That is objected to.

The COURT: Unless he presents the deed, the objection is good.

Mr. HARTZELL: Very well, present your deed to Dos Hermanos. I thought we might avoid encumbering the record with them.

The COURT:

Q. Are these points on the ground just mere spots and not coupled with any ridge or fence or other mark?

A. There is a fence.

Q. Is there a ridge of ground or raised earth?

Mr. HORD: That question is rather leading.

A. The line meanders.

Q. Let us see the deed.

A. (The witness produces a deed from his pocket).

Q. Let us find the description in this deed where it speaks of Bello Sitio.

The COURT:

Q. What is the date of that deed? Ask him.

A. 25th of April, 1897; this was the adjudication by Don Eduardo Rivera to Doña Isabel Siaca.

Q. What do you find there with reference to the boundary line of Bello Sitio?

Mr. HORD: I don't know how far that is competent without the instrument itself being put in.

The COURT: Take the instrument yourself, Mr. Hartzell, and find it.

Mr. HARTZELL: I suppose he is better acquainted with it than I am.

The COURT: Offer your instrument and show it to the other side.

Mr. HARTZELL: We will only offer such part as refers to
233 the boundary between these two properties. I don't want to encumber the record with a lot of immaterial stuff.

The witness points out the part of the deed about which he was asked, and hands it to counsel.

The COURT: Do you offer the deed?

Mr. HARTZELL: Yes, such part of the description as may be material as showing the boundary between these two properties. The trouble is it is made up of little parcels which are described separately. The offer is withdrawn.

Mr. HARTZELL:

Q. Did you know Avalo Sanchez when he was the owner of the Bello Sitio property?

A. Yes, sir.

Q. How well acquainted were you with the property at that time, the Bello Sitio property?

A. I was not thoroughly acquainted with the property but I was acquainted with him and I used to go there to that place.

Q. Did you know anything of the extent of that property, Bello Sitio?

A. I don't know it.

Q. The property known as Bello Sitio, or which you knew as Bello Sitio, did it consist of one mass of land or of separate parcels?

Mr. HORD: He said he did not know the tract very well.

The COURT: You may cross examine on it. Proceed, ask the question.

A. The portion which I knew was divided by the road.

Q. But outside of the division by the road, was there any other division of the property?

234 A. Not that I know of.

Q. Have you a certificate of survey that goes with this deed? That might help out.

A. For the whole property.

The COURT: That is of the Dos Hermanos?

Mr. HARTZELL: Yes, I want to know whether it has those boundary posts. That is all.

Cross-examination by Mr. HORD:

Q. The Bello Sitio which you have just described as being divided only by the road was the property which was in possession of Avalo Sanchez, was it not?

A. Yes, sir.

Q. The whole thing?

A. Yes, sir.

Q. In what year was that, do you know?

A. Many years ago.

Q. How many, more or less?

A. Since the time I knew Avalo Sanchez; twenty or twenty-two years.

Q. That would make it about 1887 to 1889, wouldn't it?

A. It might be.

Q. And the piece of property during those years that Avalo owned and was in possession of, was known all as Bello Sitio?

A. Yes, sir.

Q. Did you say you were now administrator of Dos Hermanos?

A. Yes, sir; at present.

Q. When did you become so?

235 A. Upon the death of my brother in law.

The COURT:

Q. How many years ago?

Mr. HORD:

Q. How many years ago?

A. A year and two or three months.

Q. Before that you had nothing to do with the Dos Hermanos did you?

A. No, I used to go there as it was the property belonging to

them and I used to go around with them and I was acquainted with it.

Q. You were acquainted in a general way with that and with Bello Sitio and all the properties around there.

A. Yes, sir.

Q. Were there any natural boundary marks between Bello Sitio and Dos Hermanos? I mean hills or rivers.

A. No, there is only those stumps and things that have sprouted. There is a very old ditch which is almost filled up now.

Mr. HORD: That is all.

Mr. HARTZELL: I think Mr. Fano misunderstood one of my questions, and that was as to whether or not they had acquired any land from Bello Sitio, and Mr. Fano asked him whether they had ever purchased any, but what I wanted to ask was whether they had ever taken any of the Bello Sitio property without buying it.

A. No, sir.

Q. And you swear that the boundary line is identical now with what it was twenty years ago?

A. I swear that it is the same.

Mr. HARTZELL: That is all.

Mr. HORD:

Q. You believe it is the same do you?

A. I swear to it. There has been no other.

Witness retires.

236 DOMINGO CERRA BECERRIL being called as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. HARTZELL:

Interpreted.

Q. What is your name?

A. Domingo Cerra Becerril.

Q. Where do you live?

A. In Fajardo.

Q. Do you know the property Bello Sitio?

A. I do.

Q. Where do you live with reference to that property?

A. On the boundary line of that property in the plantation Convento.

Q. How long have you lived on the property Convento?

A. About eight or ten years, and prior to that when I was a boy. I was born there.

Q. What is your age?

A. Twenty-five years.

Q. Well when you were a young boy did you live there?

A. I used to go almost every day there with my father.

Q. On what side of Bello Sitio is the Convento property?

A. On the north side; on the shore side.

Q. I call your attention to a plan marked: Exhibit A of the defendants and ask you whether you recognize that as a proper representation of Bello Sitio.

The COURT:

Q. Do you know anything about maps?

A. Yes, sir.

Mr. HORD: I think the witness ought to be qualified. I don't think he has been asked whether he knows the shape of Bello Sitio.

237 Q. Do you know the boundaries of Bello Sitio?

A. Yes, sir.

The COURT:

Q. Without any map would you know the boundaries?

A. Those on the Convento side, yes.

Mr. HARTZELL: Do you know the shape of the piece of ground that forms Bello Sitio?

The COURT:

Q. That is, have you been over it so that you know what the shape of the plantation is?

A. Yes, sir.

Mr. HARTZELL:

Q. I will ask you whether that farm correctly represents the form of it.

A. Yes, sir.

Q. Did you know that property when Avalo Sanchez owned it and lived there?

A. When I was a boy it belonged to Avalo Sanchez.

Q. Do you remember that? Do you remember of his being there?

A. Yes, sir.

Q. From that time to now have you been acquainted with the boundary line between that property and Convento?

A. Yes, sir.

Q. I will ask you whether from the time of your earliest recollection there has been any change in that boundary line.

A. No, sir.

Q. Are there any marks or monuments to indicate that line?

A. Yes, sir.

Q. What kind of points are there along there?

A. A cayu tree, a mocha tree and an iron post and several coroso palms.

238 Q. Is there any fence or anything of that kind?

A. Yes, sir; and also a ditch; certain parts of it are filled up and others are clean.

Q. Were you present when the surveyor was making a survey to make a map of Bello Sitio this present year?

A. Yes, sir.
Q. Did you help to indicate to him the boundary?

Mr. HORD: That is all very leading.
The COURT: It is but we will get through quicker.

Q. What did you do, if anything, with reference to his being there?
A. Yes, sir: I went to point out to him the boundary lines with Convento and the documents or deeds which I had of Convento.
Q. Did you show him those lines correctly?
A. Yes, sir.
Q. Calling your attention to Exhibit B for the defendants, I will ask you what that is.

The COURT: Did you sign that?
A. Yes, sir; there is my signature (indicating).

Mr. HARTZELL:

Q. During the time that you have known the property Bello Sitio, I will ask you whether you have known it as a single property or as separate parcels of property.
A. I have always known it as Bello Sitio.
Q. As a single conglomerate property or as separate parcels?
A. The road, the highway, is in the middle and there is one parcel on one side and the other parcel on the other side, and also the road which leads to our property divides it also.
Q. Have you ever known of the parcels being divided by separate lands intervening?
239 A. No, sir; I have not become aware of that fact.
Q. Has the Convento property since your earliest recollection ever taken or acquired in any manner any part of the Bello Sitio property?
A. No, sir.
Q. I call your attention to a document marked: Exhibit B for the defendants for identification, and ask you whether you signed this document. Is that your signature on it?
A. Yes, sir; there is the signature (indicating).
Q. Was that done in connection with the making of this survey of Bello Sitio?
A. Yes, sir.

The COURT: What is that?
Mr. HARTZELL: The formal minutes of all getting together and agreeing on the boundary line. That is all.

Cross-examination by Mr. HORD:

Q. How old did you say you are?
A. Twenty-five.
Q. In 1891 then you were five or six years old.
A. Yes, sir; I think so.
Q. Were you taking an interest in lands at that date?
A. No, sir.
Q. You say you knew Avalo in possession of those lands?

A. I saw him there several times and they told me that he was the owner of that land. I used to go there with my father.

Q. Did you ever see him in possession of those lands exer-
240 cising any of the acts of ownership or anything of that kind?

A. I don't know whether he exercised any right of ownership. I just passed by in a coach with my father and saw him there.

Q. What was he doing when you saw him?

A. On horseback there.

Q. Riding along the road, or what was he doing?

A. We had to cross the road and at that point up there is the entrance, and we saw him there.

Q. When was that?

A. I cannot remember exactly the year.

Q. How old were you?

A. I was a boy.

Q. How old a boy?

A. I don't remember exactly what age I had at that time.

Q. Five or six years old?

A. Yes, I think that, more or less.

Q. Where did you go to school?

A. In Fajardo.

Q. How long have you actually lived on the Convento estate?

A. Seven years.

Q. Since about 1902 then?

A. Yes, sir.

Q. Isn't it true that you had no personal knowledge of the boundaries of the Convento estate until after 1902?

A. I knew them well since 1902, but I always knew that in passing along that ditch on the road, in passing through that ditch or along that ditch, I knew that that row of palms that I could see from there was the boundary line between Convento and
241 Bello Sitio.

Q. In what year were you born; about 1884, weren't you?

A. Yes, sir.

Q. Can you of your own knowledge,—of your own knowledge now—tell me whether or not the other owners on the other sides of Bello Sitio have their lines of division with Bello Sitio in identically the same place that they had them in 1891?

A. I don't know because at that time I didn't go over that place.

Mr. HORD: That is all.

Mr. HARTZELL: That is all.

Witness retires.

242 RAFAEL M. BARALT being called as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. HARTZELL:

Interpreted.

Q. What is your full name?
A. Rafael M. Baralt.
Q. Where do you live?
A. In Fajardo.
Q. What is your age?
A. Twenty-eight years.
Q. And what is your business?
A. Farmer.
Q. Do you know the property Bello Sitio?
A. Yes, sir.
Q. How long have you known it?
A. Since we are adjoining land owners, twelve or fourteen years.
Q. Did you know the property before that time?
A. No, sir; by name only.
Q. What property is it that you are connected with, that joins?
A. Called the Auzubar.
Q. On what side of Bello Sitio is that?
A. Bello Sitio lies on the north and on the east side of our property.
Q. Calling your attention to defendants' Exhibit A, see if you recognize that as a description of Bello Sitio.
A. Yes, sir.
Q. Now where is your land?
A. Here (indicating the piece of land marked: Baralt on this map, which is situated on the southern side of the eastern half of this map here.)

243 Q. Were you present when a survey of that property Bello Sitio was made this year by Castro, the engineer?
A. Yes, sir.
Q. Who owns this land; do you or somebody else?
A. My father.
Q. You said you were present when Castro made this survey. Have you signed this (handing a paper to the witness)?
A. No, sir; my brother Manuel.
Q. Is his signature here? Can you identify it?
A. That is it (indicating).
Q. Are there any marks on the ground to indicate the boundary line between your property and Bello Sitio?
A. Yes, sir; in the old plan which we have.

Mr. HORD: I object to that unless he produces the plan.
The COURT: Yes.

A. A cohovana point and a jobo tree.

Mr. HORD:

Q. What are those; stakes or trees?
A. A piece of cohovana and a jobo tree.

The COURT:

Q. How long have they been there?
A. The cohovana piece a long time ago. Where the jobo tree is now, there was another cohovana which it being near to a quebrada, it seems that it has disappeared so we took that jobo tree to replace it.
Q. I will ask you to state whether or not during the time you have known this boundary line or you have known these premises, any part or portion of the Bello Sitio land has been acquired or taken in connection with your property?
A. No, sir.
244 Q. Who was the prior owner of your property, if you know?
A. We bought it of the widow of Rafael Borras.
Q. Have you ever seen the deed from the widow?
A. Yes, sir; we have it at the house.
Q. Is the boundary line the same as therein described?

Mr. HORD: That is objected to. Let them produce the document.

The COURT: That won't do. We would have to send for the deed then.

Q. Have you that deed with you?
A. I have the plan and the certificate of survey or the field notes.

The COURT: You have his statement that the lines have not changed.

Q. When was that plan made?
A. In 1884.
Q. Let us see that.
A. (The witness produces a plan from his pocket).
Q. Do you know anything about the making of this plan?
A. No, sir; I was three years old when that plan was made.

Mr. HARTZELL: Take the witness, Judge.

Cross-examination by Mr. HORD:

Q. How old did you say you were?
A. Twenty-eight years.
Q. And you say you have been living on this place for the last twelve years?
A. Not exactly on the property but in the town.
Q. Where did you live before twelve years ago?
245 A. I lived in Fajardo but I was not acquainted with that property because it did not belong to us.
Q. So you didn't know anything about the boundaries of Bello Sitio nor of that property until twelve years ago?
A. Yes, sir.

Q. And then you were sixteen years old?
A. More or less.
Q. You were born in 1881?
A. Yes, sir.
Q. You don't know anything about the boundaries of Bello Sitio in 1891?
A. No, sir; I don't know the other boundaries.
Q. You didn't know anything about the boundary of your own line concerning Bello Sitio in 1891 did you?
A. Since we acquired it; since the time that we acquired it.
Q. I am asking you about it in 1891, eighteen years ago.
A. Yes, sir; I did know it.
Q. How did you know it?
A. Because we had already acquired the property and we were bound to know it.
Q. Now stop and think a minute. You said a while ago you bought this property twelve years ago.
A. More or less.
Q. If you bought twelve years ago you didn't know it eighteen years ago did you?
A. No, sir; that is right, I didn't know it at that time; I thought you said 1901.

Q. I thought it was a mistake on your part. In 1891 you
246 didn't know anything about the boundaries of Bello Sitio or any of the adjoining properties to it.

A. No, sir.
Q. You didn't know anything about those things until 1896 or 1897, did you?
A. Yes, about that.

Mr. HORD: That is all.
Mr. HARTZELL: That is all.

Witness retires.

247 EMILIO MOREIRA being calling as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. HARTZELL:

Interpreted.

Q. What is your name?
A. Emilio Moreira.
Q. Where do you live?
A. In Fajardo.
Q. How old are you?
A. Thirty-five.
Q. Do you know the property Bello Sitio?
A. I am its present mayordomo.
Q. How long have you been acquainted with that property?
A. About fifteen years.
Q. When did you first go there?

A. I have been mayordomo in Dos Hermanos and in Convento and now I am in that same property, in the Bello Sitio property.
Q. When were you mayordomo of Dos Hermanos?
A. In 1906.
Q. When were you mayordomo of the Convento?
A. In 1904.
Q. And when did you become mayordomo of Bello Sitio?
A. Last year.
Q. Now how long do you say you have known this property Bello Sitio?
A. Around fifteen years.
Q. Have you known the limits and boundaries of that property, of Bello Sitio?

248 The COURT: During that time.

A. As soon as I was employed in the plantation Dos Hermanos I immediately became acquainted with the boundary lines because I was on an adjoining property.

Mr. HARTZELL: Well, when was that?
A. In 1906.

The COURT: Three years ago.

Mr. HARTZELL:

Q. Did you know the boundaries of Bello Sitio before that time?
A. No, sir.
Q. Who is Laureano Sanchez?
A. My principal, my chief, my boss.
Q. What property does he own there, if any?
A. Yes, sir; I have a deed here of that property.
Q. Now I invite your attention to this map marked: Exhibit A.

The COURT:

Q. Do you know anything about maps?
A. Yes, sir.

Mr. HARTZELL:

Q. Can you tell whether or not this map represents the Bello Sitio property as it is today?
A. Yes, sir.

The COURT: Take it up and look at it, and answer that intelligently.
Mr. HARTZELL: He has looked at it. I can say that to Your Honor.

A. This is the property of Laureano Sanchez (indicating).

The COURT: Is that marked there?
Mr. HARTZELL: Yes, sir; to the south of the eastern portion.

Q. Were you present at the time the engineer Castro was there making a survey of this property?

249 The COURT: This last year.

A. Yes, sir; and I had the deed with me.

Mr. HARTZELL:

Q. Did you take any part in finding that boundary?

Mr. HORD: That is awfully leading.

The COURT: Ask him what, if anything, he did.

A. To show or point out the points.

Q. You say you have the 'escritura' of that property?

A. Yes, sir.

Q. Let me see it please.

A. (The witness produces a document from his pocket).

Q. Are there any marks to show the boundary line between that property and Bello Sitio on the ground?

A. Yes, sir; there are the points.

Q. What points are there to indicate the boundary?

The COURT:

Q. Is it a river or ditch or road?

A. Starting from a Caño Ynea and then it goes to bound with the road, the boundary line of the road.

Mr. HARTZELL:

Q. Well, is the boundary line correctly shown on this map?

A. Yes, sir.

Q. Did you sign this document marked: Exhibit B (handing the document to the witness)?

A. I did.

Q. Has there ever been any change in that boundary since you have known these premises?

A. No, sir.

Q. In the fifteen years that you have known these properties, has the property that you are in charge of ever acquired any

250 part of the Bello Sitio either by purchase or taking it?

A. No, sir.

The COURT:

Q. Haven't encroached upon it in any way?

A. No, sir.

Mr. HARTZELL:

Q. And is the boundary line identical today with what it was then?

Mr. HORD: That is leading.

The COURT:

Q. Has the boundary line of that property you are in changed any way in that time?

A. Nothing absolutely.

Mr. HARTZELL: That is all.

Cross-examination by Mr. HORD:

Q. You say you are mayordomo for the Bello Sitio now?
A. Yes, sir.
Q. You work for the succession of Maria Diaz?
A. With Don Laureano Sanchez who has that property under lease.
Q. From the succession?
A. Yes, sir.
Q. When did you see this map first?
A. I haven't seen that map.

Mr. HORD: Mr. Hartzell said he had seen it.
Mr. HARTZELL: He saw it in my office.

Q. Are you sure you have not seen it before?
A. No, sir.
Q. This is the first time right here in court that you saw it?
A. Yes, sir.
Q. Who did you talk to about this case before coming here?
251 A. I was summoned to come here. When I signed on the 7th of April I was told that I would have to come here.
Q. They summoned you on the 7th of April to come here now?
A. For the survey; and now for this case we were summoned Saturday.
Q. Since you have been summoned and came here to town, who have you talked to about this case?
A. With nobody.
Q. You haven't talked to Mr. Hartzell nor Mr. Rodriguez nor Mr. Guzman?
A. I don't know him.
Q. Nor Mr. Belaval?
A. I don't know him.
Q. Nor Mr. Poventud over there?
A. I don't know him.

Mr. HORD: I don't think we want to ask him any more questions.
Mr. HARTZELL: I think the man ought to have a fair show.

Mr. HARTZELL:

Q. Who was it asked you to come here?
A. Don Arturo Saldondo.

Mr. HORD:

Q. Who is Don Arturo Saldondo?
A. That man sitting there (pointing to a man in the back part of the court room).
Q. What connection has he with this suit?
A. He notified me that I had to come over to court and testify.
Q. As a member of the succession of Veve?
A. Yes, sir.

Witness retires.

252 CANDELARIO SOTO being called as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. HARTZELL:

Interpreted.

Q. What is your name?
A. Candelario Soto.
Q. What is your age?
A. Forty years.
Q. Where do you live?
A. In Quebrada Fajardo.
Q. Do you know the property Bello Sitio?
A. Yes, sir.
Q. How long have you known it?
A. Seven or eight years.
Q. Where do you live with reference to that property?
A. In Quebrada Fajardo on the other side of the highway on a farm called Cristal.
Q. Does that farm connect or bound with Bello Sitio?
A. Yes, sir.

The COURT:

Q. On what side?

Mr. HARTZELL:

Q. On what side?
A. I am on the south and Bello Sitio is on the north.

The COURT:

Q. Do you know anything about maps?
A. I don't know how to read.

Mr. HARTZELL:

Q. Do you know the boundary line between the property where you live and Bello Sitio?
A. Yes, sir; I know it.

The COURT:

Q. What is it on the ground?
A. A jobo tree and a muñeco tree.

253 Q. Were you there this last summer at the time that Castro, a surveyor made a survey of that property?
A. I was cited or summoned that day and I showed him the points, and besides, I showed him my deed.
Q. How long have you known that boundary line?
A. About seven or eight years, when I purchased that property by those points.
Q. From whom did you buy?
A. From Don Tomas Garcia.
Q. Where did you live before that?

A. In Quebrada Vuelta considerably distant from there.
Q. Now were those points given to you when you bought the property?

Mr. HORD: I object to that.
The COURT: On the ground?
Mr. HORD: Go ahead. I withdraw the objection.

A. The property was delivered to me by those points, and the documents or deeds.
Q. Now during the time that you have known these properties, has any part or portion of the Bello Sitio property been acquired or taken by this property of yours?
A. I have today the same points that they turned over to me the property with, and according to the deed also.

Mr. HARTZELL: Take the witness, Judge.

Cross-examination by Mr. HORD:

Q. You say Bello Sitio bounds your land on the north?
A. Yes, sir.
Q. Who bounds it on the east?
The COURT: With you.
254 A. Antonio Vasquez, but there is a creek dividing the lands.
Mr. HORD: What creek?
A. Quebrada Fajardo.
Q. Antonio Vasquez you say?
A. It bounds with Bello Sitio because there is a brook or creek there.
Q. You mean that the Quebrada Fajardo is between your land and Bello Sitio?
A. There is a point called Quebrada Fajardo, and besides there is a creek.
Q. Quebrada Fajardo means a brook and also means a place, doesn't it?
A. Yes, sir; a barrio.
Q. This Bello Sitio, that is situated in Quebrada Fajardo isn't it; in the barrio of Quebrada Fajardo?
A. I don't know as the two barrios are divided. I know that I live in Quebrada Fajardo.
Q. Now who bounds your land on the west?
A. Bello Sitio and Antonio Vasquez, but Antonio Vasquez is not on the boundary line of Bello Sitio.
Q. I am not asking you that. You told me that Antonio Vasquez was on your east boundary line.
A. Yes, sir; on the south on one side.
Q. Is this man Vasquez on your south or east or west?
A. On the south.
Q. Who is on your east?
A. Bello Sitio takes a part.
Q. And who else?

A. And Antonio Vasquez, and between Vasquez and my property there is a creek.

Q. What creek: Quebrada Fajardo?

255 A. Yes, sir.

Q. And who is on your west?

A. Nieves Perez.

Q. Well do you know Jilario Soto?

A. I am Jilario Soto.

Q. I thought you said your name was Candelario Soto.

A. They call me Candelario and Jilario Soto.

Q. You say you have been living there for seven or eight years?

A. Yes, sir.

Q. Who did you buy from?

A. From Don Tomas Garcia.

Q. You say that the piece of land that you are in possession of is the identical piece of land that Tomas Garcia put you in possession of?

A. Yes, sir; the same.

Q. Do you know anything about the boundaries of Bello Sitio in 1891?

A. I don't know anything about it because as I don't know how to read.

Q. When were you born?

A. I don't remember; I know that I am forty years old.

Q. Where were you living when you were twenty-two years old?

A. In the barrio of Quebrada Vuelta.

Q. At that time did you know anything about the boundaries of Bello Sitio?

A. No, sir.

Q. Nor about the boundaries of this land that belonged to Tomas Garcia, that he sold you?

A. No, sir; from the day that I bought, that is the time that I knew about the boundary lines.

Mr. HORD: No further questions.

Witness retires.

256 PRAXIDES PEREZ being called as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. HARTZELL:

Interpreted.

Q. What is your name?

A. Praxides Perez.

Q. Where do you live?

A. In Fajardo, barrio of Quebrada Fajardo.

Q. How old are you?

A. Forty-five, more or less.

Q. Do you think it is more or less? How near can you come to it? Are you within a year or two of forty-five?

A. More or less, forty-five years.

Q. Do you know the property Bello Sitio?
A. Since I was born.
Q. Where do you live with reference to that property?
A. I am a boundary land owner; on the boundary line.
Q. What property do you live on?
A. My own land.
Q. On what boundary line are you? How does your land bound with Bello Sitio; on what side?
A. On the west.

The COURT:

Q. Do you know anything about maps?

Mr. HARTZELL:

Q. Do you know anything about maps when you see them?
A. Yes, a little.
Q. Can you understand them?
A. No, I cannot understand them.
Q. Do you know the boundaries of Bello Sitio?
A. I know them.
257 Q. How long have you known them?
A. I was born there on the boundary line, so the time that I have lived; all my life.
Q. Did you know them when Avalo Sanchez was there in charge of that property?
A. Yes, sir.
Q. Now taking the boundary line between your land and the Bello Sitio, has there ever been any change in that boundary line since you can remember?
A. Never.
Q. Is there anything on the boundary line to indicate the boundary line?
A. Yes, sir.
Q. Describe them.
A. A point of a jobo tree where there is a roller which was placed there by Avalo Sanchez himself.
Q. An iron roller?
A. Yes, sir.
Q. And is that still the boundary line of that property?
A. It has always been.
Q. Were you there at the time the surveyor Castro was making a survey this last summer?
A. Yes, sir.
Q. Did you take any part in that work that he was doing?
A. Yes, sir.
Q. What did you do?
A. I went there to point out the boundary line.
Q. And did you do that?
258 A. I did.
Q. Did you sign this (calling the witness' attention to Exhibit B for identification)?

A. Yes, sir.

Q. Has the property which you own ever acquired, either by purchase or by seizure or taking, any of the land of Bello Sitio?

A. No, sir.

Q. And the line between the two has never been changed to your knowledge?

A. Never.

Q. Now then, having lived there all your life, I will ask you to state how you have known Bello Sitio during your life, as a single property or as separate parcels of property.

A. As a mass divided in two by the highway or road.

Q. Do you know of any changes that have been made in the boundary lines of that property since Avalo Sanchez was there as proprietor, on any side of it?

A. No, sir.

Q. Do you know whether or not the land that is in the possession of the succession of Veve is the same land that he was in possession of under that name?

A. The same; it has always been so.

The COURT:

Q. How do you know that?

A. I was born there and brought up there and my father was mayordomo of the plantation.

Q. Did you see that plantation when Avalo Sanchez owned it?

A. Yes, sir.

259 Mr. HORD: Take the witness, Judge.

Cross-examination by Mr. HORD:

Q. When were you born?

A. I cannot state the date.

Q. Can you read and write?

A. Very little.

Q. You can just sign your name can't you?

A. Well, badly done.

Q. Can you read writing?

A. No, sir; I know very little about that.

Q. When did you first know Avalo Sanchez?

A. In Bello Sitio.

Q. When?

A. About twenty-five years ago.

Q. And how old were you then?

A. About twenty years.

Q. You were pretty well grown were you?

A. Yes, sir; I was working with him.

Q. And was he a property owner then in that section?

A. I don't know; I don't know whether he was manager or owner or what he was.

Q. You don't know whether he had bought Bello Sitio or whether he had not bought it?

A. No, sir.

Q. And you lived right along side of it?
A. Yes, sir.
Q. Did you know Monserrate Garcia?
260 A. Yes, sir.
Q. When did you first know him?
A. While I was a child.
Q. Monserrate Garcia was the owner of Bello Sitio, was he not?
A. Yes, sir.
Q. Do you recollect when his land was sold; Bello Sitio?
A. I don't remember that he sold.
Q. You never heard of it?
A. No, sir; never.
Q. Well, when you say that you saw Avalo there in possession twenty-five years ago, of what was he in possession?
A. I saw him there as manager or mayordomo of the plantation Bello Sitio.
Q. How many acres were there in that hacienda then?
A. 400 cuerdas.
Q. The whole thing was known as Bello Sitio was it?
A. Yes, sir; the whole property.
Q. Did you ever know a man by the name of Avelino Sauri?
A. No, sir.
Q. Did you know a man by the name of Zeppenfel that they called the Cubano?
A. No, sir.
Q. Did you ever hear of him?
A. I heard of Don Avelino but I didn't get acquainted with him.
Q. Do you happen to know a piece of land that was known years ago as the "Cercado del Cubano"?
A. I never heard of it.
Q. Did you know Josefa Quiñones?
261 A. No, sir.
Q. Did you know Avelino Rexach?
A. No, sir.
Q. Did you know Don José Manuel Flores?
A. No, sir.
Q. You never knew of any of those men owning lands around there?
A. No, sir; never.

Mr. HORD: That is all I think.
Mr. HARTZELL: That is all.

Witness retires.

262 JACINTO PEREZ being called as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. HARTZELL:

Interpreted.

Q. Where do you live?
A. In the barrio of Quebrada Fajardo.
Q. And what is your name?
A. Jacinto Perez.
Q. Do you know the property Bello Sitio?
A. I am on the boundary line of it.
Q. Do you own property adjoining with the Bello Sitio property?
A. Yes, sir.
Q. And on which side of Bello Sitio is your property?
A. I don't know the cardinal points. Bello Sitio is on this side and I am on that side (indicating with his hand).
Q. With reference to the sea, which side are you on?
A. On the east side is my property.
Q. Your property is on the east side?
A. Yes, sir.

The COURT:

Q. That is, your property is towards the east from it; towards the rising sun?
A. Yes, sir; Bello Sitio is behind.
Mr. HARTZELL: Do you know Nieves Perez?
A. He is also an adjacent land owner of Bello Sitio.

The COURT:

Q. How near him are you?
A. The property known as Aldea is between one and the other, which is the water shed.
Q. Are you east or west of the Quebrada Fajardo?
A. On the east of the Quebrada.

263 Mr. HARTZELL:

Q. How long have you lived there?
A. I am sixty-six years old; I was born there and I am still living there.
Q. Did you know the old property called Aldea?
A. Yes, sir.
Q. Is that your property?
A. The Aldea is in the middle and I am further on.
Q. Now how long have you known the property Bello Sitio?
A. Since I was born; since I had reasoning powers.
Q. How long have you known the boundary line between your property and Bello Sitio?
A. The property which I live in now belonged to my father and I was born there and I am still living there.

Q. Now I will ask you to state whether it has the same boundary line that it had when you were born.

A. Yes, sir; the same boundary line.

Q. Are there any points along that line to indicate the boundary line?

A. A heavy stump of a tree called garagua.

Q. Any other points or marks to show this boundary line except this stump?

A. The quebrada.

Q. What quebrada?

A. A brook adjoining Bello Sitio.

Q. What do they call that quebrada?

A. The Quebrada Fajardo.

Q. Now have you ever at any time acquired, either by purchase or by seizure or in any way, any part of Bello Sitio?

264 A. No, sir; it is the same boundary line.

Q. Did you know Bello Sitio when Avalo Sanchez was living there?

A. Yes, sir; I knew it when he was there.

Q. Did you know the boundary lines of it then?

A. As they run now I have always known them.

Q. Have you known Bello Sitio as a single connected property or as several pieces of property?

A. From the time that I have known it, it has been a whole body or aggregate.

Q. Do you remember or were you present during this last year when the surveyor Castro made a survey of Bello Sitio?

A. Yes, sir; and I helped him to survey it.

Q. What did you do?

A. To point out the points to him; to show him the points.

Q. Did you show them correctly?

A. Yes, sir.

Q. Are you able to comprehend a plat of this kind when you see it?

A. No, sir; I don't understand it because I don't know how to read.

Q. Have you known any changes in the boundary lines of Bello Sitio on any side since you have known that property?

A. Since I have known that property, the boundary lines are the same actual boundary lines of that property.

Mr. HARTZELL: Take the witness.

Cross-examination by Mr. HORD:

Q. What was your father's name?

A. José Perez.

Q. And he lived there too didn't he?

265 A. My father since he married lived in that same property.

Q. What was the name of your property?

A. It has no name.

Q. Never had a name?
A. No, sir.
Q. You have a very good memory?
A. Yes, sir; I remember all things past.
Q. How far back can you recollect?
A. Since I was twelve or fourteen years old or had reasoning powers and could say about those things.
Q. Do you recollect knowing a man by the name of Ramon Becerril?
A. Yes, sir.
Q. Where did you know him?
A. Living on the boundary line of that portion which now belongs to Don Manuel Baralt.
Q. He had a piece of land there did he not, which was called "El Cercado del Cubano"?
A. I don't know about that.
Q. You forgot that did you?

Mr. HARTZELL: I object to that.
The COURT: That is not proper.

Q. Did you know Don Alejandro Zeppenfel?
A. No, sir.
Q. Never heard of him?
A. No, sir.
Q. Did you know Don Antonio Zechini?
A. No, sir.
Q. Didn't you ever hear of him either?
A. No, sir.
266 Q. In what year were you born?
A. I don't remember the date. I know that I am sixty-six years old.
Q. Do you ever recollect of a survey being made of that land: of the Bello Sitio?
A. I remember of that survey made last year.
Q. And the one made when?
A. I don't remember of any other.
Q. You recollect the one made this year and the one made last year I believe you say.
A. Yes, sir.
Q. And it never was measured before?
A. They might have done it but I haven't seen it.
Q. Did you know Don Monserrate Garcia?
A. Yes, sir.
Q. Who was he?
A. Monserrate Garcia was the owner of that plantation when he had it for cattle, and afterwards I saw Don Avalo Sanchez there.
Q. When did you see Don Avalo Sanchez there?
A. Some years back but I cannot state how many years.
Q. Who do you work for?
A. I am working my own property, my farm.
Q. Anything else you do?

A. I do all kinds of work, but I am raising cane, a small patch there for the central.

Q. Can't you tell us more or less how many years it is since you saw Avalo Sanchez in the Bello Sitio?

A. No, sir; I don't want to say a lie and I cannot keep account of that.

267 Q. Was it ten years ago?

A. I don't know; I can't say how many years, more or less.

Q. Well was it more than ten years ago?

A. I should say so. I think so but I am not sure.

Q. You think what; that it was more than ten or ten?

A. I don't know; it is more or less. I don't know how to read.

Q. Can't you count?

A. No, sir; I don't know how to count either.

Q. You can't count up to ten?

A. Not even to two.

Q. Now try to recollect. Was it before San Ciriaco or after San Ciriaco that you saw Avalo there?

A. I cannot give account; I cannot give any explanation about that.

The COURT:

Q. Now, Mr. Witness, San Ciriaco is well known in this Island and you know when that happened and you have got ordinary common sense and you can tell whether you saw Avalo Sanchez there before or after that.

A. I remember San Circiaco but I don't remember whether he was there before or afterwards.

Mr. HORD:

Q. Do you recollect the hurricane known as San Narciso?

A. Yes, I remember that.

Q. When was that?

A. To ask me about the years is just the same as if you would not ask me anything at all. The only thing I remember is the storm because of the damage that we suffered.

Q. How many years old were you at the time of the San Narciso?

A. I don't remember.

Q. Were you a man grown or a boy?

268 A. I had children already at that time.

Q. Did you see Avalo there before or after San Narciso?

A. I cannot understand that; I don't remember whether he was there at that time or not.

Q. Now tell me, Mr. Witness, isn't it true that San Narciso happened in 1867?

A. I don't know. No layman can keep account of the years that elapse after a storm.

Q. When Avalo Sanchez was there in charge of that estate, was he there as owner or was he there in some other capacity?

A. I cannot say. I cannot say anything further than what I have already said.

Q. Is Don Monserrate Garcia dead or alive?

A. He is dead.

Q. When did he die?

A. I cannot tell either.

Q. Do you recollect when Don Monserrate Garcia bought the piece of land known as the "Cercado de Becerril"?

A. No, sir; I don't remember.

Q. Did Don Monserrate Garcia continue to live upon the land until he died or did he move to some other place?

A. I don't know.

Q. At the time of his death was he still the owner of Bello Sitio or was somebody else the owner of it?

A. I don't know either.

Q. Did you know the widow of Veve, Doña Maria Diaz?

A. No, sir.

Q. Did you know Don Juan Vaamonde Lopez?

269 A. No, sir.

Q. Did you ever see the latter, Don Juan Vaamonde Lopez, in charge of this land?

A. No, sir.

Q. Did you know Gabriel Arruza?

A. No, sir.

Q. Did you ever see him in charge of that land?

A. I don't know whether he was in charge or not. If he was, I don't know it.

Q. Where were you living in the years 1891 to 1895?

A. I don't know anything about those years. The only thing is that where I was born I am still living on the boundary line of Bello Sitio.

The COURT:

Q. Mr. Witness, it is well known in this case that this Mrs. Diaz lived there in that vicinity for many years.

Mr. HARTZELL: No, she never lived there at all.

The COURT: Well, Vaamonde Lopez lived there.

Mr. HARTZELL: No, he lived at Luquillo.

Mr. HORD:

Q. Did you ever hear of any lawsuits between Avalo Sanchez and the widow of Veve, Maria Diaz?

A. No, sir; I don't know anything about it.

Q. You never heard anything about it?

A. No, sir.

Q. Who is in possession of the land now, of Bello Sitio?

A. The succession of Veve.

Q. They are in possession of it now?

A. Yes, sir.

Q. Are they planting it or using it at all?

270 A. Raising cane.
Q. Themselves?
A. I don't know whether it belongs to them or whether they have leased it to somebody. I know that they are raising cane there.
Q. Do you know Laureano Sanchez?
A. No, sir.
Q. Isn't it true that Laureano Sanchez lives right on the Bello Sitio alongside of you?
A. I don't know that man; I don't know whether he lives there.
Q. Isn't it true that Laureano is planting that land in cane today, or a large part of it?
A. I don't know whether it is he or who is planting that.
Q. Are you married?
A. Yes, sir.
Q. Who lives with you? Do you live by yourself as sort of a hermit or do you have a family living with you?
A. I live in my house with my children and my wife.

Mr. HORD: I think that is all, Sir.

Redirect examination by Mr. HARTZELL:

Q. Did you ever know of one Sauri or anybody else owning a piece of land within the outside boundaries of Bello Sitio?
A. No, sir; I haven't known it.

Mr. HARTZELL: That is all.

Recross-examination by Mr. HORD:

Q. Who have you talked with about this case before coming here to testify?
271 A. With nobody; I didn't know anything about this suit.
Q. How did you come to come here?
A. Because on Sunday I was notified by the man in possession of Bello Sitio as an adjacent land owner to come here to testify.
Q. Who was that man?
A. Don Arturo sent word to me.
Q. Don Arturo Saldondo?
A. Yes, sir.
Q. Is this the first time you have been to San Juan?
A. Yes, sir.
Q. And you have never talked to any of these gentlemen about this case (pointing to the lawyers for the defense).
A. No, sir.
Q. Never told any of them what you knew about it?
A. No, sir.

Witness retires.

272 ULISES RIVERA being called as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. HARTZELL:

Interpreted.

Q. What is your name?
A. Ulises Rivera.
Q. What is your age?
A. Between 23 and 24 years.
Q. And what is the name of your father?
A. Gervasio Rivera.
Q. Do you know the Bello Sitio property?
A. Yes, sir.
Q. How long have you known that property?
A. Since I was born.
Q. Where do you live with reference to that property?
A. An adjacent land owner, an adjoining land owner.
Q. You say your father's name is Gervasio Rivera?
A. Yes, sir.
Q. And does that property stand in his name?
A. In the name of my mother.
Q. On what side of the property do you live?
The COURT: Of what property?
Mr. HARTZELL: Of Bello Sitio.
A. With the road on the north side and on the east of Bello Sitio.
Q. Do you know anything about a map? Can you understand a plan of that kind (handing the witness Exhibit A for the defendants)?
A. Yes, sir.
Q. Where is your property if this is Bello Sitio?
A. Here (indicating the northwest corner of the map)
273 and on the north the road leading to Luquillo.
Q. And on the east?
A. With Bello Sitio.
Q. Were you present there this last year when surveyor Castro made a survey of Bello Sitio?
A. No, my brother.
Q. Are you acquainted with the boundary line between your property and Bello Sitio?
A. Yes, sir.
Q. How long have you known that line?
A. Since I was born.
Q. Are there any marks or stakes or things or posts to indicate where that is?
A. Yes, sir.
Q. What is there to indicate it?
A. Two iron rollers.
Q. Who put them there?

Mr. HORD: Of his own knowledge.

A. Since I was born I have seen them at that point.
The COURT: How big are these iron rollers?
A. They are those iron rollers used for grinding cane in old times.

Mr. HARTZELL:

Q. From the time of your earliest recollection has there been any change in that boundary line?
A. No, sir.

The COURT: Now is his land in any place that could affect this suit?
Mr. HARTZELL: Yes, sir; the plaintiff swore that every one of the boundary lines had been changed.

274 Q. Are you acquainted, have you been acquainted with the other boundary lines of Bello Sitio?
A. No, sir; I don't know the other boundary lines.
Q. Now from the time of your earliest recollection I will ask you to state whether or not you have known Bello Sitio as a single mass of property or whether you have ever known it as separate parcels of land.
A. Since I have known Bello Sitio since I have had reasoning powers, I have known that as Bello Sitio, the whole aggregate. I have not known any other land except Bello Sitio.
Q. Well have you known Bello Sitio as a single piece of land or as separate divided pieces?

The COURT:

Q. Or have you known two pieces called Bello Sitio?
A. I know that the road divides Bello Sitio and there is one portion on one side of the road and another portion on the other side of the road.
Mr. HARTZELL: But you don't know of any portions with another portion of land between them?
A. The road.
Q. Now do you recollect of ever knowing Avalo Sanchez there?
A. I have known that as a dream because I was very young.
Q. Have you ever known of any changes in the boundary lines of Bello Sitio since you can remember?
A. No, sir.

Mr. HARTZELL: That is all.

Cross-examination by Mr. HORD:

Q. In what year were you born?
275 A. I think in 1882 or 1883; I am not sure.
Q. Are you certain it was one of those years or about that time?
A. Yes, but I don't remember well the date.
Q. How old are you?
A. More or less 23 or 24 years or thereabouts.
Q. If you were born in 1882 that would make you 27 wouldn't it?

A. I cannot state exactly my age.
Q. Do you recollect Monserrate Garcia?
A. No, sir.
Q. You never saw him living at Bello Sitio?
A. No, sir.
Q. Did you ever know Avalo Sanchez living in Bello Sitio?
A. I have already stated that I remember it just like a dream because I was very young at that time.
Q. Then at the time that Avalo Sanchez was living there you don't know what the boundaries were of your own tract or of any other tract?
A. No, sir; I had no reasoning power at that time so I could not know that.
Q. So of your own knowledge you don't know whether any of those boundaries were changed between that time and the time that you acquired your reasoning powers, of your own knowledge.
A. In my opinion they have never been changed.
Q. That isn't what I asked you. I asked you whether you know of your own knowledge.
A. I know it, that they have not been changed.
Q. Since before you had reasoning powers?

The COURT: Don't waste the time of the court with such questions.

276 Q. These iron rollers that you mentioned, about how much would they weigh?
A. I don't know.
Q. More or less.
A. I don't know; I don't know what is the weight of those rollers.
The COURT: Show with your hands, how large were they?
A. The size of those old rollers for grinding cane.
Mr. HORD: Well can't you tell us more or less how much they would weigh? How thick were they?
A. About two feet in diameter.
Q. Are they solid or hollow?
A. There is a portion of them which is hollow. You can put your hand into it.

Mr. HORD: That is all.

A JUROR:

Q. Are those iron rollers sunk down in the ground or are they on top of the ground?
A. One is sunk into the ground and the other one is lying on the ground.
Q. How deep?
A. I don't know the depth. I have not excavated.

Mr. HORD:

Q. Judging from the one that is lying on the ground, how deep would the other one be in the ground?
A. I have not measured it.

Q. Where is your father?
A. In Fajardo; he is more than ninety years old and he cannot see and cannot walk.

Witness retires.

277 FRANCISCO FIGUEROA being called as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. HARTZELL:

Interpreted.

Q. What is your name?
A. Francisco Figueroa.
Q. Where do you live?
A. In Juan Martin, barrio of Luquillo.
Q. Do you know the property Bello Sitio?
A. No, sir; I don't know it at all.
Q. What property do you live on?
A. In the property of Doña Luisa Garcia.
Q. Is that the property known as the succession of C. Garcia, Concepcion Garcia?
A. Yes, sir.
Q. Do you know whether or not that property touches the finca Bello Sitio?
A. Yes, sir.
Q. Do you know the line between those two properties?
A. Yes, sir.
Q. How long have you lived there?
A. Fourteen or fifteen years.
Q. Have you the deeds to this property?
A. No, sir.
Q. Were you present this last summer when a survey was made of Bello Sitio by Castro?
A. Yes, sir.
Q. Did you take any part in that deslinda or survey?
A. Yes, sir.
278 Q. What did you do?
A. The lady told me to show him the points.
Q. Well, did you show him the points?
A. Yes, sir.
Q. That is, the points of the boundary between your property and the Bello Sitio?
A. Yes, sir.
Q. Now what points did you show him? What is there on the ground to indicate that line?
A. An ausubo post and a jobo post.
Q. During the time that you have known this property or during the time you have known this boundary, has there ever been any change in that boundary line?
A. No, sir.

Q. Has the property that you represent ever acquired in any way any part of the Bello Sitio property?
A. No, sir.

Mr. HARTZELL: You may take the witness.

Cross-examination by Mr. HORD:

Q. Where did you live before you went to work for Doña Luisa Garcia?
A. In the barrio of Quebrada Fajardo.
Q. Did you know anything about the boundaries of Bello Sitio before that time?
A. No, sir.
Q. All the knowledge you have of it has been acquired in the last fourteen or fifteen years, has it?
279 A. Yes, sir.
Q. Do you know Mr. Avalo Sanchez?
A. Yes, sir.
Q. Where did you first know him?
A. Here in Rio Grande.
Q. You never knew him when he was living on Bello Sitio?
A. No, sir.
Q. And you didn't know what the boundaries of Bello Sitio were when he was living there?
A. No, sir.
Q. You don't know do you whether anybody after Avalo left there, took part of the land or not?
A. No, sir.

Mr. HORD: No further questions.
Mr. HARTZELL: That is all.

Witness retires.

280 MANUEL VEVE being called as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. HARTZELL:

Interpreted.

Q. What is your name?
A. Manuel Veve.
Q. Where do you live?
A. In La Ceiba.
Q. What age have you; how old are you?
A. 55 or 56 years of age.
Q. Do you know the property Bello Sitio in Quebrada Fajardo?
A. Yes, sir.
Q. How long have you known that property?
A. Twenty years.
Q. Did you know it when Avalo Sanchez was there?
A. Yes, sir; a little by passing.

Q. How much did you know of the property at that time? What acquaintance did you have with it?

A. I was there in that property. I was the mayordomo of that property.

Q. When were you mayordomo in that property?

A. I was put there by Don Juan Vaamonde in 1891.

Q. Now did you know the property before that?

A. Yes, sir; but only by passing.

Q. In 1891 did he say?

A. Yes, sir; then I was put there employed by Don Juan Vaamonde.

The COURT: That was the year the mortgage was foreclosed.

Mr. HARTZELL: That was the year of the foreclosure.

281 Q. Did you get acquainted with the boundaries of that property at that time?

A. When I went there, yes.

Q. From that time to the present do you know of any changes which have ever been made in the boundary lines?

A. I cannot state exactly; I have heard that it had been changed, but I don't know what change has taken place there.

Q. Do you know of any changes that have taken place?

A. I have heard that they have made some changes.

Q. Where have you heard that there have been any changes made?

A. The people who live there; some of them.

Q. Well do you know who?

A. I have heard of one called Jilario.

Q. Do you know anything about it yourself, not what anybody told you?

A. Yes, sir.

Q. What do you know about it personally?

A. I heard that that man had bought that property.

Q. You heard that he had bought some property from Bello Sitio?

A. No, on the boundary line of Bello Sitio.

Q. That is not what I mean at all. Do you know of any changes which have been made in the location of the boundaries with Bello Sitio?

A. No, sir.

Q. Do you know of any adjoining owners of that property stealing or taking any land belonging to Bello Sitio?

A. I don't know that; I haven't seen them steal any.

The COURT:

Q. Have you seen anybody move up their lines and take any more land than they were entitled to?

282 A. No, sir; I don't know that.

Mr. HARTZELL:

Q. From the time that you went there as mayordomo to the time that you left there, had there been any changes in the boundary lines at all?

A. None; while I was there no change was made.

Q. The property which was turned over to your possession, was it a single property or was it several pieces of property?

A. One sole property; the only thing was that it was divided by the road, the highway.

Q. Did you ever hear prior to that time of its being separate parcels or of its being one mass?

Mr. HORD: That would be hearsay.

The COURT: It would be hearsay and leading. I think you had better withdraw that.

Mr. HORD: He might not have heard a lot of things.

Mr. HARTZELL: All right. You may take the witness, judge.

Cross-examination by Mr. HORD:

Q. You testified in this case on the former trial did you not?

A. Yes, sir.

Q. What relationship, if any, exists between you and the defendants in this case?

The COURT: The succession Veve.

A. No, sir.

Q. Didn't you testify on the former trial that you were related to them?

A. Yes, but it is a very distant relationship coming from my father's side.

Q. You have been an employé of that succession for many years haven't you?

283 A. Yes, sir.

Q. Are you now?

A. Yes, sir.

Q. Now you say you were put in possession of the Bello Sitio in 1891 by Don Juan Vaamonde Lopez?

A. Yes, sir.

Q. At that time you knew nothing about the boundary lines?

A. No, not up to that time. I had some knowledge of the property by passing.

Q. When you took possession what was growing on the land?

A. Nothing.

Q. Nothing at all; how long did you remain there as mayordomo of the finca?

A. Five years.

Q. Up to 1896?

A. Yes, sir.

Q. What happened in 1896?

A. In 1896? I went there by the end of 1891 and left by the end of 1897.

Q. You went there the end of 1891 and left there the end of 1897: is that it?

A. That is it.

Q. During all of that time, all of those years, you were in exclusive possession of all the lands of Bello Sitio?

A. Yes, sir.

Q. How many acres were there?

A. I didn't measure them but I was told that there were four hundred.

Q. And it was all one solid body was it?

284 A. Yes, divided up by the road.

Q. Part of it north of the road and part of it south of the road?

A. That is it.

Q. Who bounded that tract on the north at that time?

A. Plantation Convento and Doña Isabel Siaca.

Q. And nobody else?

A. Not on the north.

Q. Who bounded it on the east?

A. Doña Isabel Siaca.

Q. The Hacienda Dos Hermanos, wasn't it?

A. With Convento and Isabel Siaca on the north and on the east with Doña Isabel.

Q. That is the piece of land called Dos Hermanos isn't it?

A. Yes, sir; and the succession of Telemaco, and at that time the lands of Jilario Joyes.

Q. Do you recollect a piece of land of Concepcion Garcia on the west?

A. Yes, there was a small patch there of some old woman right close to the road.

Q. You know Don Gervasio Rivera do you not?

A. Yes, sir.

Q. He is on the west isn't he?

A. Yes, sir; on the west.

Q. Now at the time you were in charge of that land from 1891 to 1897, in going from the land of Gervasio Rivera over to the Dos Hermanos, would you be always and entirely on the Bello Sitio or would you cross somebody else's land?

A. Through Bello Sitio lands only.

Q. Do you recollect a man by the name of José Gonzalez Darder?

285 A. No, sir.

Q. You never heard of him?

A. No, sir.

Q. During the time you were there, was he in possessoin of a part of this land or not?

A. If I don't know him.

Q. Did you know a man by the name of Miguel Correa?

A. Yes, sir.

Q. When did you know him?

A. While he was in a farm called Aldea.

Q. What was he doing at the Aldea; was he the owner of it?

A. He was in charge. I don't know whether he was mayordomo or what he was.

Q. Was he ever in possession of part of this land that you have just mentioned, Bello Sitio?

A. Of the whole Bello Sitio as trustee, as it is said, but I didn't know; of the whole property.

Q. Was he in possession while you were in charge of it too?

A. Yes, sir; but he could not go in there while I was there.

Q. You were in charge then and he was not in charge?

A. I said that he was not in possession; he was as trustee but he had no rights over there. I say that because I had cattle on that property. If he had been in charge he would not have allowed my cattle to be on pasture there. He had been appointed trustee but without right.

Q. So he was never in actual possession of any part of that property?

A. While I was there, no.

Q. Nor José Gonzalez Darder either?

A. While I was there, no one of those were there with a right.

286 Q. You were there from 1891 to 1897, were you not, continuously?

A. Yes, sir.

Q. All the time?

A. Yes, sir.

Q. Without interruption?

A. Yes, sir.

Q. Now do you know Gabriel Arruza?

A. Yes, sir.

Q. Where did you know Gabriel Arruza?

A. As trustee of Bello Sitio also.

Q. During what years?

A. In 1896 I think, I am not sure.

Q. Was he in possession of any part of that land?

A. As trustee.

Q. He was in possession of a part of it was he?

A. Yes, sir.

Q. And where were you?

A. No, of the whole thing: of the whole Bello Sitio.

Q. Where were you living when you were in possession?

A. In the house standing there in Bello Sitio.

Q. Who actually had charge of the property then in 1896, you or Gabriel Arruza?

A. At that time he was in charge as trustee of the whole property.

Q. And you were out?

A. Then I lived at the house but I didn't have any command there.

Q. When you left there in 1897, who remained in possession of it?

A. The widow of Veve.

Q. How did she get possession again?

A. I don't know; I didn't know about that: I was not in-

287 formed about that.

Q. How long did Gabriel Arruza remain in possession?

A. A year. I don't remember well, six months, something of the kind.

Q. While you were there during those six years did you ever hear of the tract of land called Flores containing six acres of land claimed by Avalo Sanchez?
A. No, sir.
Q. You never heard of it?
A. No, sir.
Q. Nor of the four and a half acres bought of Avelino Rexach?
A. Nothing of the kind.
Q. Nor of the three cuerdas bought of Josefa Quiñones?
A. No, sir.
Q. During those six years did any one tell you or did you have cause to speak with Avalo Sanchez say, claiming 124 acres of land which he bought of Sauri?
A. No, sir.
Q. You never heard of Sauri?
A. Never.

Mr. HORD: I think that is all, Sir.

Witness retires.

288 AVELINO LAFONT being called as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. HARTZELL:

Interpreted.

Q. What is your full name?
A. Avelino Lafont.
Q. Where do you live?
A. In Fajardo.
Q. How long have you lived in that neighborhood?
A. All my life.
Q. How old are you?
A. Seventy-six.
Q. Do you know the property Bello Sitio?
A. I know it.
Q. How long have you known it?
A. Many years ago.
Q. Did you know it when Monserrate Garcia was owner of it?
A. Yes, sir.
Q. Did you know it afterwards when Avalo Sanchez was the owner of it?
A. I knew it.
Q. And have you known it since the widow Veve acquired it?
A. Also I have known it.
Q. Did you during these times know the boundary lines of it?
A. Yes, sir; I did.
Q. Did you have any knowledge of the number of cuerdas in that property?
A. 400 cuerdas, more or less.
Q. During all of that time, I will ask you to state whether this

property was a single mass of land or whether it was separate
289 divided parcels of land.

A. One solid mass of ground.

Q. Did you know of Avalo Sanchez owning any separate parcels of land within the perimeter of Bello Sitio separate from Bello Sitio?

A. Independent of Bello Sitio he had a farm called Aldea.

Q. Was that within the perimeter of the boundaries of Bello Sitio or outside?

A. No, sir; it was not within.

Q. Did you know at any time of any of the boundaries of Bello Sitio being changed?

A. I think not because the actual boundaries are the same that they were in old times.

Q. When did you see it last?

A. Very frequently; every moment.

The COURT:

Q. Did you see it within this last year?

A. Yes, sir; I have seen it.

Mr. HARTZELL:

Q. Did you ever hear of Avelino Sauri owning any land within the perimeter of Bello Sitio?

A. I never heard it. The only one is Monserrate Garcia.

Q. How well did you know Monserrate Garcia; how well acquainted were you with him?

A. I was very well acquainted with him.

Q. How much were you there on this land; how many times?

A. Yes, sir; very frequently.

Q. How well acquainted were you with Avalo Sanchez?

A. Yes, I was his mayordomo in his plantation.

Q. Were you mayordomo of Bello Sitio?

A. Yes, sir.

290 Q. What time?

A. I don't remember the year.

Q. Was it during the time that Avalo Sanchez was in charge of it as the owner of it?

A. When he was the owner of Bello Sitio.

Q. Now are you related to Monserrate Garcia?

A. No, sir.

Q. Or to any of the parties in interest in this matter?

A. No, sir.

Q. How long were you mayordomo of the place?

A. Only eight or ten months.

Q. During that time did you have occasion to get acquainted with all of the boundaries of that property?

A. Yes, sir; because when I was employed there, he himself went over the ground with me and pointed them out to me.

Q. And at that time the ground that he pointed out to you, did it have any separate parcels within the perimeter except Bello Sitio itself?

A. No, sir; never.

Mr. HARTZELL: That is all. Take the witness.

Cross-examination by Mr. HORD:

Q. You say you cannot recollect the year that you were there as mayordomo?

A. No, sir; I cannot remember.

Q. Was it before or after Don Monserrate Garcia's land was sold to Avalo Sanchez?

A. Afterwards when Avalo was the owner.

Q. Before that time had you seen Avalo on this land?

291 A. Before he became the owner?

Q. Yes.

A. Yes, I saw him when I visited the house.

Q. You say you knew Don Monserrate very well?

A. Yes, sir; very well acquainted with him.

Q. And you used to go to his house very frequently?

A. Yes, sir.

Q. Every few days?

A. Yes, almost every day.

Q. Where did Don Monserrate live in 1874?

A. I don't remember in which time he lived in the plantation Bello Sitio.

Q. Can't you tell us, more or less when he left there?

A. No, I cannot.

Q. Did he live there up to the time that his land was sold to Avalo Sanchez?

A. Yes, sir; he lived there.

Q. And after that where did he live?

A. In a farm bounding with that same property.

Q. Well now I understood you to say that you went to his house frequently while he was living on Bello Sitio.

A. When Don Monserrate Garcia lived there.

Q. And you say that Avalo you only saw when he came to the house?

A. Yes, sir; when he visited the house.

Q. Did Avalo have anything to do with the Bello Sitio land while Monserrate was living on the finca?

A. In my opinion he had nothing to do.

Q. He was not engaged in planting them?

292 A. I don't know that.

Q. Isn't it true that from 1874 Avalo went there as the mayordomo of Monserrate Garcia to take charge of Bello Sitio?

A. He was there but I don't know in what capacity. He might have been there but I cannot say about the time.

Q. Can't you tell me whether or not from your very intimate friendship with Monserrate and Avalo, can't you tell us whether he was mayordomo of Monserrate Garcia during that time?

A. I don't know because he never told it to me.

Q. Didn't you see him around attending to the cultivating of the land and giving orders?

A. I saw him sometimes busy and sometimes he was not busy.
Q. Well when he was busy what was he doing?
A. There in the plantation.
Q. Then he was working on the plantation was he?
A. I don't know whether he was working or not. I saw that he was there attending to some business; I don't know whether he was there working in the plantation or not.
Q. What business was he attending to?
A. To go over the property and things of that kind.
Q. When he went around over the property did he give orders or simply go as a spectator?
A. I don't know whether he issued any orders or not.
Q. Isn't it true that at that time Avalo Sanchez was planting a piece of land in the Quebrada Fajardo on his own account?
A. I don't know it.
Q. And you knew Avalo very well at that time?
A. Yes, sir; I knew him.
293 Q. Isn't it true that Avalo Sanchez continued to plant that 124 to 140 acres for many years after 1874?
A. I don't know. He cultivated those lands while he was in the plantation. I don't know whether he did it before or not.
Q. Well when did he begin to cultivate the plantation?
A. When it belonged to him.
Q. When was that?
A. When he was the owner. I don't know in what time it was.
Q. Do you mean when he bought from Monserrate Garcia?
A. Yes, sir; after he became the owner.
Q. Up to that time he had not planted and did not own any land there?
A. In my opinion neither did he have planted nor did he own any land there.
Q. Now you say you knew Don Monserrate Garcia very well. How did his land- come to be sold, do you know?
A. I don't know.
Q. You don't know whether he sold them himself or whether they were sold by the court or how?
A. I heard that the court had sold them at public sale. I am not sure of that.
Q. Don Monserrate didn't tell you anything about that?
A. No, sir.
Q. Nor Avalo Sanchez either?
A. No, sir.
Q. Did you know Juan Vaamonde Lopez?
A. Yes, sir.
Q. Where did you know him?
294 A. In Fajardo.
Q. Did you know him in connection with these lands at all?
A. I don't know if he had any intervention in these lands.
Q. You never knew him to have any intervention in these lands?
A. I don't know.

Mr. HORD: That is all.
Mr. HARTZELL: That is all.

Witness retires.

295 PASCASIO PARILLA being called as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. HARTZELL:

Interpreted.

Q. Do you know the property Bello Sitio?
A. I am an adjoining land owner.
Q. How long have you known the boundary between your land and Bello Sitio?
A. Since the date that I bought that property. I have got the deed here.
Q. When was that?
A. Twenty years, more or less. That appears on the deed.

Mr. HARTZELL (after referring to the deed which the witness produced): The deed is dated 1892.

Q. Ask him if he knew that boundary line before the date of that deed.
A. No, sir; I was living in another barrio and then I came to Fajardo and then I bought that land.
Q. Has that boundary line ever been changed since you purchased that land?
A. No, sir; it is the same.
Q. Have you ever secured possession by purchase or seizure or in any other way of any portion of Bello Sitio?
A. No, sir.
Q. Are there any marks showing that boundary line of yours?
A. A ditch.
Q. Has it always been there since you have known it?
A. Yes, it was opened by the first owner of that plantation.

Mr. HARTZELL: That is all.

296 Cross-examination by Mr. HORD:

Q. You are sure you have not taken any of that land are you?
A. No, sir; I am positive; perfectly sure.

Mr. HORD: That is all, Sir.

Witness retires.

297 RICARDO S. BELAVAL being called as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. POVENTUD:

Interpreted.

Q. What is your name?
A. Ricardo S. Belaval.
Q. Where do you live?
A. In Fajardo.
Q. Where did you live in the year 1866?
A. Also in Fajardo.
Q. Did you at that time know the Hacienda Bello Sitio?
A. Yes, sir; between the year- '66 and '67.
Q. Whom did Bello Sitio belong to at that time?
A. To Don Monserrate Garcia.
Q. Did you know Don Monserrate Garcia?
A. Yes, sir; very well.
Q. Were you related to him in any way?
A. Yes, sir; I was son in law.
Q. And Mr. Avalo Sanchez is the same relation to Mr. Monserrate as you were?
A. Not at that time; later on.
Q. In that year 1866 that you knew Bello Sitio, did you go into the property?
A. Yes, sir.
Q. And did you have occasion to see or know the boundary lines of Bello Sitio?
A. Several times with Don Monserrate Garcia, we went over the property, around the same.
Q. And did Mr. Monserrate Garcia show it to you as one tract of land?

298 Mr. HORD: We object to that, Sir, on the ground that it is the same kind of testimony that we offered and Your Honor ruled out; declaration against interest.
Mr. HARTZELL: That is the question I have been asking all day.
Mr. HORD: It is a declaration made against interest by a person who is dead.
The COURT: Strike it out.

Q. Now you say that Mr. Monserrate Garcia took you around Bello Sitio many times did you not?
A. Yes, we walked around the property.
Q. And did you know yourself personally of your own knowledge, Bello Sitio as one tract of land?

Mr. HORD: I object to that as leading.
The COURT: Yes, that is leading. You must ask it some other way.

Q. What was the form of Bello Sitio?

A. I would like you to be more definite in order that I may understand your question.

Q. What is the form of Bello Sitio, is it one sole tract or composed of several tracts?

A. I know it as a mass of land divided or crossed by the road leading to Luquillo.

Q. Have you ever been manager of Bello Sitio too?

A. A very few days after I married the daughter of Don Monserrate Garcia, I took charge with my father in law in the management of that property, but he was in charge of the field works and I only took charge of the factories there; of the establishments.

Q. Now did you at any time know a man by the name of Sauri owning lands around there?

299 A. I knew Don Avelino Sauri but I never knew him as a land owner in that vicinity.

Q. Did you ever know him as owning a parcel of land together or in co-ownership with Monserrate Garcia?

A. No, sir; never.

Q. Did you ever know that man to own any parcel of land within the outer boundaries of Bello Sitio?

A. No, sir.

Q. Now did you later on, that is to say, after those years or recently have occasion to go into Bello Sitio and inspect it again?

A. It is a long time since I have been in Bello Sitio.

Q. But do you know Bello Sitio as it is actually?

A. Only slightly; I have not been inside, just passing through the Luquillo road.

Q. Does it strike you as being the same in a general way as it was at that time?

Mr. HORD: That is objected to as too remote.

The COURT: The objection is sustained.

Cross-examination by Mr. HORD:

Q. You are a brother of José Sastraño Belaval, are you not?

A. Yes, sir.

Q. Were you sworn as a witness here when this case first started?

A. Yes, sir.

Q. You heard the charge of the Court to keep out of the hearing of the court didn't you?

A. Yes, sir.

Q. Isn't it true that the Marshal had to get you away from

300 there and keep you from hearing what the other witnesses were testifying in this case?

A. I approached just to see the room there at the entrance, but as soon as I learned that it was forbidden, I immediately retired.

Q. Are you and Avalo Sanchez friendly?

A. No, sir.

Mr. HORD: That is all.

Witness retires.

301 One Becerril was called as a witness in behalf of the defendants, but his examination was waived upon the following admission being made by counsel for the plaintiff: That Mr. Becerril was put in possession of the Bello Sitio after the certiorari decision and remained there only twenty-four hours. He went there and took the land that plaintiff is suing for here and was put out again.

Mr. POVENTUD: I want to offer in evidence the agreement of these colindantes, the whole document with the signatures.

Mr. HORD: I object to it unless it is admitted to show the present boundaries of Bello Sitio.

The COURT: That is all it can show.

The document in question was then placed in evidence and marked: Exhibit D for the defendants.

Mr. POVENTUD: We offer in evidence a certified copy by the registrar of property of Humacao showing the boundaries of Bello Sitio from the first inscription to the last, as indicating that they have never changed, which was admitted also last year.

Mr. HORD: The boundaries of Bello Sitio are shown by all the deeds which are now in. This is a certificate from the registrar of property which must necessarily be taken from the conveyances.

The COURT: That is wholly immaterial.

Mr. POVENTUD: Is it rejected?

The COURT: Yes.

Mr. POVENTUD: I take an exception.

302 The COURT: It is immaterial.

The document in question was then marked: E for the defendants but was not placed in evidence.

Mr. POVENTUD: Now I offer a certificate showing the several steps taken by Avalo Sanchez in bankruptcy.

The COURT: What is the object of it?

Mr. POVENTUD: It states that the trustee Arruza went to the Bello Sitio with the marshal and the court of bankruptcy had before it a certain schedule of properties of the bankrupt Avalo Sanchez, and apart from Bello Sitio were these four tracts of land.

Mr. HORD: We withdraw the objection, Sir.

The document was then placed in evidence and marked: Exhibit F for the defendants.

Mr. POVENTUD: I also offer in evidence a certificate of the registrar of Humacao showing that there has not been any change in the boundaries.

Mr. HORD: It is the same proposition as the other.

The COURT: If it is the same proposition, the ruling is the same. The document is excluded.

Mr. POVENTUD: I will take an exception if Your Honor please.

The document was then marked: G for the defendants but was not placed in evidence.

Mr. POVENTUD: Also another certificate of the registrar showing that Avalo Sanchez gave a mortgage to Planas.

The COURT: That was testified to on the stand and he did not deny it, so you can't put that document in.

303 Mr. POVENTUD: I take an exception.

The document was then marked: H for the defendants but was not placed in evidence.

Mr. POVENTUD: Now I offer in evidence in behalf of defendants the certificate showing the date at which Avelino Sauri was married, showing that the land was gananciales and that his wife should have signed the deed.

Mr. HORD: We object to that as not being one of the issues.

The COURT: That is immaterial. You may offer it. I refuse it.

Mr. POVENTUD: I take an exception to the exclusion of that.

The document was then marked: I for the defendants but was not placed in evidence.

Mr. POVENTUD: I offer in evidence a certificate of the registrar of property showing exactly the very additional note, as it was called, presented to the registrar of property in 1902 by Avalo Sanchez for the inscription of the deed of Gotay for 249 cuerdas.

The COURT: That is in evidence and read to the jury.

Mr. POVENTUD: I withdraw it then. Now one of the pleas that we set up in our answer is that of res adjudicata, and I offer in evidence the Court's opinion in the other case.

The COURT: What has my opinion in the other case got to do with this. I have decided the other case and this case must stand on its own footing. The other deed is all that you need and it is enough.

Excluded.

304 Mr. POVENTUD: I note an exception.

The document was then marked: J for the defendants but was not placed in evidence.

Mr. POVENTUD: To sustain the plea of res adjudicata I offer the decision in the declarativo suit filed by Mr. Avalo Sanchez in the first instance court.

The COURT: That doesn't concern you here.

Mr. POVENTUD: I just offer it in evidence. The suit was decided against him and in favor of the defendants' ancestor Mrs. Maria Diaz. Save the point.

The document was then marked: K for the defendants but was not placed in evidence.

Mr. POVENTUD: I offer the plan made by the surveyor Martinez Mora who is dead now; drawn by him of Bello Sitio.

The COURT: Why isn't one map enough? It encumbers the record with two.

Mr. HORD: No objection to the admission of this map except of course with the same condition that it will go to show what the boundaries at that time were when it was made. It was made in 1907.

Mr. POVENTUD: I withdraw the offer as there is one plan already in.

I offer an order of Judge Toro Cuevas of the district court putting us in possession of this property.

The COURT: You might as well let that in.

Mr. HORD: I object to this.

305 The COURT: It is admitted.

The document was then placed in evidence and marked: Exhibit L for the defendants.

Mr. HARTZELL: We offer a copy of the proceedings which occurred at the delivery of the possession when the court gave possession to the widow on the foreclosure.

Mr. HORD: I think that was put in evidence before.

The offer is withdrawn.

306 JOSÉ SASTRAÑO BELAVAL being called as a witness in behalf of the defendants, was duly sworn and testified as follows:

Direct examination by Mr. POVENTUD:

Interpreted.

Q. What is your name?

A. José Sastraño Belaval.

Q. What position do you hold now, Mr. Belaval?

A. Registrar of property.

Q. Do you know Mr. Avalo Sanchez?

A. Yes, sir; I knew him.

Q. Did you know him in the year 1885?

A. Yes, sir.

Q. Did you ever in your life draw any mortgage in favor of anybody executed by Avalo Sanchez?

A. I knew him before 1885.

Q. Did you ever draw any deed for him of any kind?

A. No, sir; never.

Q. Any public document?

A. No, sir.

Q. A deed or mortgage in favor of Mrs. Maria Diaz?

A. When Don José Avalo Sanchez was indebted to my father in law for about 13,000 pesos, upon his death the succession agreed or decided.

The COURT: What has this got to do with the case?

Mr. HORD: This is extraneous.

Mr. HARTZELL:

Q. I want to know whether you were present when that deed was drawn, or had any knowledge of it.

A. No, sir; I was in Humacao as registrar of property and
307 they gave orders to the notary to draw the deed.

Q. You were not present when this deed was drawn?

A. No, sir.

Mr. HARTZELL: That is all.

Cross-examination by Mr. HORD:

Q. Who gave orders to the notary to draw this deed?

A. I suppose it was Mr. Vaamonde.

Mr. HORD: That is all.

Witness retires.

Mr. HARTZELL: Defendants rest.

308 *Testimony in Rebuttal.*

JOSÉ AVALO SANCHEZ being recalled as a witness in his own behalf, testified as follows:

Direct examination by Mr. HORD:

Interpreted.

Q. You heard the testimony here yesterday of those persons who testified in regard to the boundary of Bello Sitio with Gervasio Rivera's land.

A. Yes, sir.

Q. They testified about some iron cylinders that marked the boundaries. Who placed those cylinders there, do you know?

A. I did.

Q. You are familiar with them then?

A. Yes, sir.

Q. Describe them please and say about how much they weigh?

A. About 150 pounds; they are old rollers for grinding cane.

Q. Do you mean old rollers or old style of rollers?

A. The first kind used, which were hollow and they were filled up with wood.

Q. Have you seen those cylinders there in the last few years?

A. I have not been in the plantation but when I have passed by along the road I have seen that they have been moved. They are about two feet and a half long, and I make this statement for the reason that I dropped them into the ground, and they are about 22 or 23 inches in diameter, hollow, and when I placed them there I planted a tree inside, and now when I saw them they had no tree inside; they had been pulled out, and the more so that they have been dug out, that when Rivera testified he said that one of those was lying on the ground. If they had not touched them, those trees would have grown up.

309 Q. What kind of trees were they?

A. Jobo.

The COURT:

Q. Did you put those rollers there as a boundary line mark?

A. That is it.

Mr. HORD:

Q. Are those cylinders in such position with reference to the road that goes through the tract, that you can see them from the road?

A. Yes, sir; because the boundary line of Gervasio Rivera bounds with the road.

Q. When you placed them there did you leave any one of them lying on the ground or did you bury them both?

A. I had no use to leave them lying. I placed them in their respective places and planted a tree inside.

Q. When you placed them in their respective places, did you put them on the ground or did you bury them in the ground?

A. No, I dug a hole and put them inside. I buried them.

Mr. HORD: That is all.

Mr. HARTZELL: No cross examination.

Witness retires.

310 JULIO ESPAROLIN being called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct examination by Mr. HORD:

Interpreted.

Q. What is your name?

A. Julio Esparolin.

Q. What is your business at present?

A. Employé.

Q. Did you ever live in Fajardo?

A. Yes, sir.

Q. Were you ever a judicial officer of any court in Fajardo?

A. Yes, sir; secretary of the municipal court in Fajardo.

Q. Did you know Gabriel Arruza?

A. Yes, sir.

Q. We have here a record which states that you took part as secretary of the court in delivering possession to Arruza in 1894 or '95 of the property which belonged to Mr. Avalo Sanchez, said Arruza being the trustee in bankruptcy.

A. Yes, sir; in my capacity as secretary of the municipal court.

Q. Will you please tell us what you did at that time?

Mr. HARTZELL: I understand that what he did was certified to the court and is here in evidence certified as a public record.

The COURT: If that is a fact you can cross examine on it. He is here himself.

Mr. HARTZELL: I know but would he be allowed to dispute it?

The COURT: What have you to say to that, judge?

Mr. HORD: Only this: I think that ordinarily a public record when made must be taken for absolutely true. Your Honor
311 didn't seem to agree with me in the premises.

The COURT: I don't think you understood the ruling.

Mr. HORD: Consequently I bring this witness not to contradict the record but to explain it.

The COURT: What does the record say? It is in evidence isn't it?

Mr. HORD: Yes, sir.

The COURT: Well read that to me.

Mr. Hord reads Exhibit F for the defendants to the Court.

The COURT: What is the date of that instrument?

Mr. HOBB: April 27, 1896.

The COURT: I will permit the question: Who did the actual turning over there on the ground, to explain here what he did. That is what we are trying all the way through here.

Mr. HARTZELL: We withdraw the objection and let him go ahead and examine the witness.

Q. You were clerk of the Fajardo court in 1896 I believe you said.
A. Yes, sir.
Q. Did you know José Franco Valdes?
A. Yes, sir.
Q. Where is he?
A. He now lives in San Juan.
Q. Is he here in court?
A. Yes, sir.
Q. Did you know Epifanio Rivera?
A. Yes, sir.
Q. Where is he?
312 A. He died in Fajardo.
Q. And Gabriel Arruza, you say you knew him?
A. Yes, sir.
Q. Where is he?
A. He also died in Fajardo.
Q. And Juan Velasquez, did you know him?
A. I also know him.
Q. Where is he?
A. I think he must be in Fajardo; it is a long time that I don't know his whereabouts.

Q. When you and the marshal went out to deliver the possession of the Bello Sitio to Gabriel Arruza in 1896, what did you do?

A. To carry out the instructions set out in an order of the superior court in order to give possession through the bailiff who acted as such to Mr. Arruza as trustee for the bankruptcy estate as it was set out in the order of the court.

Q. Had you known Arruza before that?

A. Yes, sir; I had known him for some time.

Q. At that time you went there to give him possession of the land, was he or was he not in possession already of some land in the neighborhood?

A. According to what I heard——

Mr. HARTZELL: Just a minute; we musn't have conservations here unless some of the defendants were there.

The COURT: If you saw him there in possession and he himself told you he was in possession, you may tell it.

Mr. HARTZELL: Let me get this straight. Can somebody not connected with these defendants pretend to be in possession of
313 something and this man come there and talk with him and come in here in prejudice to a registered title and relate that conversation?

The COURT: I think this is an exceptional case, Mr. Hartzell. The question all through this case has been whether or not there

are separate pieces of land out there that the plaintiff did not put in his mortgage.

Mr. HARTZELL: But this it seems to me would be an absolutely impossible situation. If this trustee was out there he must have been there for some purpose. He had no connection whatsoever, or right to speak for or to prejudice the rights of these defendants.

The COURT: The jury understand that.

Mr. HARTZELL: I don't know whether anybody understands it. I want to get it clear, and I don't see how the conversation of this man can affect the rights of the defendants who have a registered title. What they said to each other as to different pieces of land without any connection with these defendants, I submit could not possibly be evidence here as affecting their rights. Here is a proposition as to what was said by somebody sent there by the court when we were out of possession.

The COURT: What did this man go there for; to turn over the property from who to who?

Mr. HORD: To take possession of the 100 acres from Juan Vaamonde Lopez and turn it over to the trustee in bankruptcy.

The COURT: With the trustee in bankruptcy himself he may tell if it refers to a specific piece.

314 Mr. HARTZELL: Then I note an exception as to any conversation not connected with the defendants.

Q. When you went there to give possession to Arruza was he or not in possession of some land there in that neighborhood at that time?

A. According to the statement of the bailiff or sheriff.

Q. According to statements made by the bailiff?

A. According to the statement made by Arruza to the bailiff or sheriff.

Q. Who was the bailiff?

A. Epifanio Rivera.

The COURT:

Q. Was Juan Vaamonde Lopez there at any time?

A. No, sir; I didn't see him there in those surroundings.

Q. That was in your presence, was it, what was said there?

A. Yes, sir; and of the other witness.

Q. Let us hear what that was to see whether it is material. What was that answer?

Mr. HARTZELL: Counsel for defendants objects to any testimony by this witness as to conversations between himself and the alleged trustee in bankruptcy without having shown the presence of some representative of the defendants at such conversation. If that is overruled, I take an exception.

The COURT: I will overrule it for the purpose of seeing what it amounts to.

A. Arruza told the alguacil that he was in possession of some other lands set forth or expressed in that order of the court, the rogatory letter.

Mr. HORD: The order of court sets out that he be put in possession of all these five pieces of land.

315 Mr. HARTZELL: Now I move to strike this out.

The COURT: The motion is overruled.

Mr. HARTZELL: Note an exception.

The COURT: You may ask the question.

Q. Now then will you please tell us what it was that Mr. Arruza told the marshal in your presence at that time about being in possession of other properties?

A. The marshal in compliance with the order which he had received, was going to carry it out and turn over what was therein stated.

Q. Yes, and then?

A. And when dealing about the property or referring to the property, or speaking about the property, he asked him what that property consisted of because he had agreed to point out to him what composed the plantation Bello Sitio, and he said that he had no use to worry about that because he was in possession of some lands and that the boundary lines were all right.

The COURT:

Q. What did they worry about then? What happened then?

A. And the party who was going to receive that, or the trustee, agreed to it and he considered the property as turned over to him as set forth in the return of the order of the court.

Q. Was this man Arruza there on the ground at the time?

A. Yes, sir.

Q. Was there anybody representing the widow Veve there at the time?

A. I think there was an employé or a peon or a mayordomo.

Q. How could the officer take any property away from her if she was not there?

Mr. HARTZELL: That is the whole question here.

The COURT: You may argue that to the jury.

Q. Did you see any of the properties there on the ground
316 that the trustee referred to, that he said he was in possession of?

A. No, sir; we went to the factories, to the buildings of Bello Sitio. I was not acquainted with the boundary lines of Bello Sitio.

Mr. HORD:

Q. Did you go anywhere else on the finca? Did you go around it?

A. No, sir.

Q. So you went to the house and talked with Arruza and he told you about the lands and then you went back?

A. And we drew up a memorandum in accordance with the law.

Mr. HORD: That is all.

Cross-examination by Mr. HARTZELL:

A. I call your attention to a paper marked: Exhibit F for the defendants, and calling your attention to the second page of that document and the upper part of the third page, I will ask you whether that is the report that you made of that transaction.

A. Yes, sir.

Q. Is that a correct copy of your return?

A. Yes, sir.

Q. Did you find any other property there except Bello Sitio?

A. I was not the one who had to search for it. It was the bailiff, the one who was carrying out the order of the court.

Q. Yes, but you made a return, did you not?

A. No, I as secretary had to read the order of the court and give possession and I as secretary had to draw up the report.

Q. Who is the one who actually gives possession?

A. The delegate of the judge, who during Spanish days
317 was the bailiff or sheriff.

Q. In this conversation which you heard, Arruza was already in possession of this property was he not; actual possession?

A. According to his statement to the sheriff.

Q. He told the sheriff he was already in possession of the property?

A. Not of the general property; not of Bello Sitio, but of some land and that it was all right.

Q. And that he was satisfied with the boundaries?

A. Yes, sir; as set forth in the order of the court.

Q. And in your return you made no reference to any properties except Bello Sitio?

A. Certainly, as it is in the order of the court.

Mr. HARTZELL: That is all.

Witness retires.

318 DOMINGO YGLESIAS, being called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct examination by Mr. HORD:

Interpreted.

Q. What is your name?

A. Domingo Yglesias.

Q. How old are you?

A. Forty-two years of age.

Q. Where do you live?

A. In Rio Grande.

Q. Did you ever live at Fajardo?

A. Yes, sir.

Q. Did you know Doña Maria Diaz, widow of Veve?

A. No, sir.

Q. Did you know Don Juan Vaamonde Lopez?

A. I did.

Q. Did you know Miguel Correa?
A. I did.
Q. Are you acquainted with the lands which belonged to Mr. Avalo Sanchez at or near Fajardo?
A. I knew them.
Q. In 1892 where were you?
A. In Maneyes, municipal district of Luquillo.
Q. How old were you at that time?
A. About 24 or 25 years of age.
Q. Do you know anything about the measuring of lands?
A. Yes, sir; a little about measurements.
Q. Did you or not have occasion to measure the lands of Bello Sitio at that time?
319 A. Yes, sir.
Q. At whose request?
A. Of Don Miguel Correa and Don Juan Vaamonde.
Q. Did anybody assist you?
A. Yes, sir.
Q. Who?
A. Manuel Decene.
Q. Where is he now?
A. I don't know.
Q. You don't know whether he is dead or alive?
A. No, sir.
Q. You say you measured the hacienda?
A. Yes, sir.
Q. Who was with you and this other gentleman when you measured it?
A. Miguel Correa, Juan Vaamonde, Manuel Decene and some other gentlemen who lived in that vicinity near the plantation.
Q. Boundary owners?
A. Miguel Correa and Juan Vaamonde were the interested parties.
Q. But these other parties.
A. According to what I saw, they were adjoining land owners of small plantations near Bello Sitio.
Q. As distinct from Bello Sitio at that time did you know of any other land at that place belonging to Avalo Sanchez?
A. When we started the measurement, starting our survey from the east to a trail which leads to Convento and the caño called Ynea, we left a tract without measuring it.
Q. What for?
A. Because that portion, they said that it was independent
320 of Bello Sitio plantation and of a different owner.
Q. Who did they say owned it?
A. I don't know who was the owner.
Q. When you say that they made those statements to you, who were "they"?
A. Don Juan Vaamonde and Don Miguel Correa didn't allow me to measure it.
Q. But you did measure the Bello Sitio itself?

A. Yes, sir; what Don Miguel Correa and Juan Vaamonde said belonged to Bello Sitio.

Q. How many cuerdas did you measure?

A. If I am not mistaken, upon making the calculations they said that it had nearly 400 cuerdas; the seventeen cuerdas lacking were taken up by the road which divided the property.

Q. Did these 383 acres or 400 acres include or not the other lands which you have just mentioned which they would not let you measure?

A. No, sir.

Q. Do you know how many cuerdas were in that piece of land?

A. No, sir.

Q. What was its general shape with reference to Bello Sitio?

A. That is a square piece which is between a trail and a caño.

Q. You know where the Caño Cayures is, do you not?

A. Yes, sir.

Q. And the Caño Ynca you just mentioned.

A. Yes, sir.

Q. This land that you just mentioned that was not measured, how did it lie with reference to those two caños?

321 A. We measured the eastern part and afterwards we went down to measure the western part, which on one part bounded with Caño Cayures, and the others, the boundary owners or adjoining land owners like Hacienda Convento and others whom I did not know.

Q. In how many pieces of land was this Bello Sitio that you measured?

A. On the eastern part we measured four parts and afterwards on the western part we measured two parts and afterwards from the road near the Celis bridge we measured another small lot.

Q. In how many pieces of land, large pieces of land, was Bello Sitio divided; one or more?

A. We measured seven pieces.

The COURT:

Q. But as being contiguous and adjoining each other and forming a single tract or more than a single tract, what do you say?

A. Two on the eastern part and two on the western part and southern part.

Q. You still don't understand the Court. Counsel wants to know, and so does the jury, whether or not Bello Sitio as you then measured it, no matter how many fractions or different pieces it was made up of, was it all one continuous whole tract or was it divided in any way, and if so, by what?

A. Yes, sir; it was divided.

Q. How was it divided or in how many pieces?

A. A farm in the middle and besides the brooks or creeks.

Mr. HOBB: Can you draw us a sketch from memory as to the general shape of that land (handing a pad to the witness)?

A. This is the eastern side which we measured (indicating); here

runs the road; here is the Convento trail. We measured
322 this tract here; the road follows here and here runs the Ynea Channel. Here is a tract and here is the piece which we did not measure. And there was another farm which was the independent farm, and here we measured two pieces, one on one side of the road and the other on the other side of the road, which is divided here by the Caño Cayures, and up here we measured another lot.

Q. So that the land that you measured lay in two bodies on each side of this "estancia"?

A. And this square which was not measured because it belonged to some other party.

Q. Now you say that Mr. Juan Vaamonde Lopez was along with you at that time?

A. Yes, sir; and Don Miguel Correa.

Q. Well when you got through with your measurement on that basis, was Mr. Vaamonde satisfied or was he not satisfied?

Mr. HARTZELL: That is not fair.

The COURT: You may state what he said.

Q. When you got through with your measurement, what did Mr. Vaamonde say about the same being correct or not correct?

A. After we finished the survey and the field notes and the calculations were made, they said that it was all right and although there were seventeen acres lacking, that might be accounted for by the land taken by the trails and the road.

Q. In what year did you say that was; 1892?

A. In 1892.

Q. During what months?

A. I think it was in the month of June.

Q. Who paid you for making that survey?

323 A. Don Juan Vaamonde and Miguel Correa; they paid to Manuel Decene whom I accompanied and who was the one who paid me.

Mr. HORD: That is all.

Cross-examination by Mr. HARTZELL:

Q. What were you doing at that time? What was your business?

A. I worked with Don Manuel Decene.

Q. Who was Manuel Decene?

A. A man who was in charge of plantations and acted as mayordomo.

Q. What plantation was he in charge of?

A. I knew him in the plantation Margarita.

Q. What experience had you had in measuring land before that time?

A. I know how to multiply a little and aided him in the surveys.

Q. But in measuring the land what part of it did you do?

A. Sometimes I carried the chain or the cord and sometimes I took down the figures on a piece of paper.

Q. What has become of this surveyor or this man that you worked with?

A. He must be in Fajardo or Luquillo; he used to live in the barrio of Pitahaya.

Q. He is the man who actually made this survey, isn't he?

A. Both of us.

Q. Was he a surveyor? this man Decene?

A. No, sir; he was only an amateur but everybody called him.

Q. Did you have any machines for making these measurements?

A. No, sir; only an emajagua string.

Q. It was all done with a string was it?

A. Yes, sir.

321 Q. Did you have any trouble in finding the boundary lines?

A. Sometimes we had trouble; sometimes when they said the line runs to this point, we had to call some people of the vicinity to find it.

Q. Do you now Avalo Sanchez, the plaintiff in this case?

A. Yes, sir.

Q. How long have you known him?

A. Since I was a boy when he was the mayordomo of the plantation Carmelita.

Q. Did you know him at the time you made this survey?

A. Yes, I did know him.

Q. Who has talked to you about your evidence in this case?

A. Mr. Avalo Sanchez.

Q. When did he first talk to you about it?

A. About a month or so ago.

Q. Where were you at the time?

A. Here in the Gandul.

Q. Is that your home?

A. Yes, sir; I am there temporarily.

Q. Do you know what became of the notes or documents with reference to that measurement that you say was made there?

A. No, because we took that in a small note book and Don Juan Vaamonde and Don Manuel Decene kept it.

Mr. POVENTUD:

Q. Did the adjoining owners sign that little pamphlet to which you refer?

The COURT: That is immaterial because Vaamonde Lopez was along himself and agreed to it. It won't make any difference whether they signed it or not but you may ask it.

325 Q. Did the adjoining owners agree to that and sign the note book?

A. No, sir; none of them signed but they themselves came to the ground and they pointed out there this line and sometimes they objected, etc.

Q. So nothing was written out of these measurements?

A. No, sir; nothing.

Q. And what you have been telling us here now is your recollection of so many years, is it not?

A. Yes, sir.

Q. Now at that time do you remember, if you made the survey yourself, how many square varas did you take to the cuerda?

A. Twenty-five square yards is a cuerda.

Q. Is that the measurement you used at that time?

A. We made the survey with an emajagua string of fifteen Spanish varas, which is the standard for measuring lands.

Q. That is the only apparatus you used in measuring, is it?

A. Yes, sir; that was the only instrument used.

Witness retires.

Mr. HOBD: We now ask the Court to submit to the jury, framed in such language as the Court may see fit in order to avoid complications which the Court foresaw, the substance of the evidence which we offered yesterday; the part only which has reference to Doña Maria Diaz. This man is referred to therein.

Mr. HARTZELL: I insist that this is not fair. We took two
326 days of this court's time to discuss this thing.

The COURT: I will overrule the motion.

Mr. HOBD: We note our exception.

We offer in evidence the sketch drawn by the witness as illustrating his testimony, that the jury may bear it in mind.

No objection was made to the introduction of same, and it was submitted in evidence and marked: Exhibit Q for the plaintiff.

AVALO SANCHEZ was then asked the following question by his counsel, without taking the stand:

Q. Do you know whether Manuel Decene is alive or dead?

A. He died about six or seven months ago.

After the arguments to the jury of Messrs. Scoville and Poventud and at the opening of the afternoon session of court, the Court announces that it will hold that the plaintiff is entitled to recover damages only for the time from one year previous to the date of the filing of the complaint here, to which action of the Court, counsel for the plaintiff then and there duly excepted.

327 *The Court's Instructions to the Jury.*

GENTLEMEN OF THE JURY: This is an action at law in ejectment for the recovery of land and damages, brought by the plaintiff, who alleges himself to be a subject of the King of Spain but a resident of Porto Rico, against about thirteen persons, men, women and children, as defendants, all alleged to be citizens and residents of Porto Rico, whose names are set out in the complaint and who are alleged to be the succession or heirs of one Maria Diaz, the widow of one Veve. It is this diversity of citizenship between the parties, coupled with the amount involved, that gives the court jurisdiction to try the case.

Although the Court presumes that such would be your sentiment anyway, still it instructs you that the citizenship of the parties as such, while necessary to give jurisdiction to this court, must cut no figure in the rights of the parties in your minds. They are entitled to exactly equal rights before the law and before this court, and their nationality must not weigh one jot in the determination of their rights. Neither must any occurrence at the trial affect you in any way, but the rights of the parties must be, under your oaths and the law, decided by you fairly and impartially on the facts as you have heard them here upon the stand and as you may gather them from the pleadings and the exhibits, and the law as contained in these instructions to you. No juror is permitted during the deliberations to testify in the cause for that is what any statement involving a fact not testified to, by any juror to others would be. The other side has no opportunity to cross examine such a juror, hence courts caution juries against statements of exterior alleged facts made by the one to the other.

328 The land he describes and seeks to recover, consists of four separate tracts, containing respectively 3 cuerdas, 6 cuerdas, 4½ cuerdas and 12¾ cuerdas, or in all 138¼ cuerdas, as follows:

1. A tract of land containing three cuerdas purchased from Doña Josefa Quiñones by private document and bounded as follows: On the north by the hacienda Bello Sitio; on the south by the lands of the Succession Westen; on the east by the Caño de la Henea and on the west by lands of José Lopez.

2. Another tract of six cuerdas purchased from Don José Manuel Flores, with the houses thereon, bounded on the north and south by the hacienda Bello Sitio on the east by the old road leading to the hacienda Convento and on the west by the Caño de la Henea.

3. Another tract of four and one-half cuerdas purchased by private document from D. Avelino Rexach, and bounded on the north by the hacienda Convento and on the south, east and west by the hacienda Bello Sitio.

4. Another tract of 124¾ cuerdas acquired by purchase from D. Andres Avelino Sauri, by private document, which sale was later ratified by public instrument before the notary of Humacao, D. José Maria Cuadra, bounded as follows: On the north by the hacienda Convento; south by lands of Pascual Perez and the tract called "Aldea" and east and west by the hacienda Bello Sitio.

The Court instructs you that the main issue herein is the question as to whether or not the plaintiff included in his mortgage to the widow Veve the whole or any portion of the land he is now suing for here, and if you believe from a preponderance of the evidence that he did so, and that the widow Veve believed that he did

329 so, and that he knew or ought to have known that she believed so, then he is estopped and cannot claim the land from her or her heirs in this suit.

You are further instructed that in determining this fact you may look to the description the plaintiff put in his mortgage and to all the documents or papers to which that mortgage referred, that are

in evidence before you, and consider all the surrounding facts as to the situation of the property and the parties at the time. If you find from a preponderance of the evidence that the plaintiff did not include the whole or any of the tracts of land he is now suing for, in his mortgage, and that the widow Veve knew that he did not so include the same, or ought to have known it, and that she in fact received in the mortgage all the land mentioned therein, then the plaintiff is entitled to recover that land or such portion thereof in this suit as you may believe from a preponderance of the evidence was not so included in plaintiff's mortgage, together with damages for the taking of any property therefrom, and the rental value thereof to the date of your verdict.

Gentlemen, that clause was written in the prior instructions and I modified it by a subsequent clause, as you will see, that plaintiff is entitled to recover the whole or nothing under the evidence in this trial.

You are warned, gentlemen, not to be confused by the amount of litigation that may have taken place between these parties in other courts. The facts as developed in this cause are what must guide you, but of course in determining what such facts are you may resort to all the records that have been introduced before you to enable you to do so.

330 You are instructed that the parties to a mortgage or conveyance are bound by the recitals thereof, the seller as much as the buyer, the mortgagor as much as the mortgagee, but if there is ambiguity in the description of the land as to what it includes or does not include, then you may resort to all the evidence in the case to determine what the parties understood or intended should be included in, or excluded from such conveyance or mortgage.

You are further instructed that verbal testimony can never be introduced to vary the terms of a written instrument if the language of that instrument is plain and unambiguous, and it is only in a case where ambiguity exists that courts and juries may look to the surrounding facts and circumstances as developed in the evidence to determine what the parties meant.

You are instructed that if you believe from a preponderance of the evidence that when plaintiff made the mortgage to the widow Veve, he was then in possession of a tract of land he had purchased from one Monserrate Garcia and that said tract then contained four hundred cuerdas of land, then you must find, under the language of the descriptive clause of the mortgage, that he did not convey to her any of the tracts he now sues for, and it will make no difference that others may have appropriated portions of that four hundred cuerdas thereafter during the turmoil and litigation that took place in after years, if you shall so believe, because having been in possession of that land at the date of the mortgage, he would not be required to make it up later, as he had fulfilled his contract once, nor would any shortage occurring at the foreclosure justify any court or any marshal or sheriff in putting the purchaser at the foreclosure in possession of any other lands of the

331 plaintiff not included in his mortgage to the widow Veve.

You are further instructed that if you believe from a pre-

ponderance of the evidence that at the time the plaintiff made the mortgage to the widow Veve, the land which he purchased from Monserrate Garcia did not in fact contain four hundred cuerdas, or that some portion had been taken from him in the meantime, and that he was not then in possession of that number of cuerdas, then you are further instructed that if he afterwards acquired other lands adjoining the tract he originally owned and which would be required to make up the four hundred cuerdas he mortgaged, and which she had good reason to believe, and did believe were included in the mortgage, then the law will hold that such land is included, and in such case you should find for the defendants here, so as to make up the full quantity of land.

But you are further instructed that if he had the four hundred cuerdas when he made the mortgage and adjoining owners appropriated portions of it after he was deprived of possession of it, and before or after the widow Veve or her heirs got it on execution sale, then plaintiff cannot be held here in this sort of a suit to make up the required number of cuerdas a second time, because if the widow Veve's mortgage covered four hundred cuerdas of land when made, that plaintiff then had outside of what he now sues for, she had the right to follow that mortgaged land against all trespassers, and the plaintiff is relieved and she could not permit trespassers to keep or to since take it from her and then endeavor to take other land of plaintiff in lieu thereof.

You are instructed, gentlemen, that the burden of proof is always upon a plaintiff, and after a plaintiff makes out a prima
332 facie case it devolves upon the defendant to disprove the same, but a plaintiff recovers upon the strength of his own title and not upon the weakness of that of a defendant.

The Court has concluded as matter of law that the statute of limitations has run against the recovery of any damages for crops taken from the land claimed by this plaintiff save since a time beginning one year previous to the date of the filing of the suit, which was June 27, 1907, and as there is no sufficient evidence in the cause showing that any crops were taken from the place since then, the rental value is what you must measure the damages by under the evidence, and if you should find for the plaintiff give him damages for the rental value of the property from that date to the present, which must be within the amount claimed in the complaint.

You are further instructed that a preponderance of the evidence in any case does not necessarily mean the side that has the more exhibits, maps or witnesses, but it means the side that in your minds as reasonable men has the truth with it, based upon the evidence in the cause.

You are further instructed that you are the sole judges of the weight of the evidence and if you believe that any witness has wilfully sworn falsely to any material fact, you may disregard the whole or any portion of such witness' testimony unless the same shall be corroborated by other facts and circumstances in the case. In like manner you are the judges of the weight to be given to all documentary evidence where such weight is not fixed by law, and

you may take into consideration the facts surrounding the execution of instruments and whether they are made by public officials or by private persons.

333 The Court has concluded, gentlemen, that there is no evidence in this case that warrants any verdict except a complete verdict for the plaintiff or a complete verdict for the defendants, and therefore you are instructed that you must find completely for the one side or the other under these instructions and the evidence. Therefore but two forms of verdict will be given you. One will read: We, the jury, find that the plaintiff is entitled to recover from the defendants the several tracts of land as described in the complaint, together with damages for the wrongful detention thereof in the sum of blank dollars. And the other will read: We, the jury, find for the defendants. When you arrive at a verdict you will of course cause it to be signed by one of your number as foreman and all of you will return it into court.

Such trials as this are expensive, both to the Island and to the parties, and it is therefore hoped that you will arrive at a verdict, but nothing in this statement is intended to influence any juror to give up to any other juror his honest opinion if he believes that injustice would be done to the other side by so doing. It is simply intended, gentlemen, to induce you if possible to be reasonable in all things and weigh the evidence, facts and circumstances carefully and impartially. No one can question your motives for your verdict. No one is under oath but you. It would be contempt of court for anybody to question you for the verdict you may render.

The case is with you, gentlemen.

Mr. Hord: Before the jury leaves, may I ask Your Honor to note our exception to Your Honor's taking away the question of damages for the crops?

334 The Court: Yes.

Mr. Hartzell: Counsel for the defendants except to that portion of the instructions which reads as follows: You are further instructed that in determining this fact you may look to the description the plaintiff put in his mortgage and to all the documents or papers to which that mortgage referred, that are in evidence before you and consider all the surrounding facts as to the situation of the property and the parties at the time. If you find from the preponderance of the evidence that the plaintiff did not include the whole or any of the tracts of land he is now suing for, in his mortgage, and that the widow Veve knew that he did not so include the same, or ought to have known it, and that she in fact received in the mortgage all the land mentioned therein, then the plaintiff is entitled to recover that land or such portion thereof in this suit as you may believe from a preponderance of the evidence was not so included in plaintiff's mortgage, together with damages for the taking of any property therefrom, and the rental value thereof to the date of your verdict. Defendants also except to the following paragraph of the instructions:

You are instructed that the parties to a mortgage or conveyance are bound by the recitals thereof, the seller as much as the buyer, the

mortgagor as much as the mortgagee, but if there is ambiguity
335 in the description of the land as to what it includes or does not include, then you may resort to all the evidence in the case to determine what the parties understood or intended should be included in, or excluded from such conveyance or mortgage.

You are further instructed that verbal testimony can never be introduced to vary the terms of a written instrument if the language of that instrument is plain and unambiguous, and it is only in a case where ambiguity exists that courts and juries may look to the surrounding facts and circumstances as developed in the evidence to determine what the parties meant.

Defendants also except to the following paragraph:

You are instructed that if you believe from a preponderance of the evidence that when plaintiff made the mortgage to the widow Veve, he was then in possession of a tract of land he had purchased from one Monserrate Garcia and that said tract then contained four hundred cuerdas of land, then you must find, under the language of the descriptive clause of the mortgage, that he did not convey to her any of the tracts he now sues for, and it will make no difference that others may have appropriated portions of that four hundred cuerdas thereafter during the turmoil and litigation that took place
336 in after years, if you shall so believe, because having been in possession of that land at the date of the mortgage, he would not be required to make it up later, as he had fulfilled his contract once, nor would any shortage occurring at the foreclosure justify any court or any marshal or sheriff in putting the purchaser at the foreclosure in possession of any other lands of the plaintiff not included in his mortgage to the widow Veve.

Defendants also except to the following paragraph:

But you are further instructed that if he had the four hundred cuerdas when he made the mortgage and adjoining owners appropriated portions of it after he was deprived of possession of it, and before or after the widow Veve or her heirs got it on execution sale, then plaintiff cannot be held here in this sort of a suit to make up the required number of cuerdas a second time, because if the widow Veve's mortgage covered four hundred cuerdas of land when made, that plaintiff then had outside of what he now sues for, she had the right to follow that mortgaged land against all tres-passers,
337 and the plaintiff is relieved and she could not permit tres-passers to keep or to since take it from her and then endeavor to take other land of plaintiff in lieu thereof.

The End.

338 *Stenographer's Certificate.*

I, Arthur J. Harvey, Official Stenographer of the District Court of the United States for Porto Rico, hereby certify that the foregoing document, consisting of two hundred and sixty-two typewritten pages, is a true and correct transcript of all the testimony in the case of Jose Aval Sanchez v. Concepcion Veve et al., tried in the above entitled court at the October Term thereof, 1909, which said

testimony was reported by me in shorthand at the time of said trial and was thereafter by me transcribed from my shorthand notes.

ARTHUR J. HARVEY,
Official Stenographer of the District Court of the United States for Porto Rico.

339 EXHIBIT H FOR THE PLAINTIFF.

Instrument of Judicial Sale of Plantation Issued by Don Jose Ygnacio Beyens y Somera, Judge of First Instance for This Judicial District, in Favor of Don Jose Avalo Sanchez, January 5, 1880.

Copy issued by Don Antonio de Aldrey y Montolio, Notary of Humacao, Porto Rico.

340 Translation.

Number 4.

Judicial Sale of Plantation.

In the town of Humacao, Island of Porto Rico, on the 5th day of the month of January, 1888, I, Don Eugenio de Torres, notary of the Illustrious Territorial College of this province, with residence and vicinity in the capital of this district, with the witnesses mentioned at the end thereof, attended upon the Court of First Instance for this District for the purpose of proceeding to the execution of the instrument hereinafter referred to; and Don Jose Ygnacio Beyens y Somera, being present, who is sitting in said court by appointment of His Majesty (whom God may keep) and commissioned therefor, I made a statement to him of the proceedings in the matter of the cession of properties of Don Monserrate Garcia, a resident of Fajardo; and of the executory action prosecuted by Messrs. J. H. Cooper & Company, as representatives of the firm of James Mathews and Company of London, not consolidated therewith, in the manner following:

The aforesaid Garcia having been declared in involuntary insolvency by order of court dated the 22nd day of May, 1886, in the proceedings which for this purpose were prosecuted by Don Cristobal Andreu against the said Garcia in this court (folio 43), the said proceedings were lawfully prosecuted until on the 3rd day of October of the aforesaid year a meeting of creditors was held in which they presented their claims (pages 99 over to 100) an order was issued by the Court on the same day dismissing the motion for the consolidation with the universal action aforesaid of the executory action of the said James Mathews and Company, of Don Jose Manfredi and Eusebio Ramos (folio 101) which was declared to have been consented to and as res judicata by order of the 10th of the
341 same month (folio 194 over); and upon entry being made of the said exclusion and consent in the executory action of the

said Cooper, as set forth at folio 74, the said proceedings were proceeded with and the plantation Bello Sitio, the property of the defendant, which had been attached, was appraised in the manner following: Sixteen thousand pesos for the four hundred cuerdas of land of different kinds at forty pesos each; the furnace house, with zinc roofing with four caldrons and smokestack, in the amount of two thousand pesos; another house for storage, roofed with the same material, with its molasses tank, in the amount of fifteen hundred pesos; another house, zinc roofing, for the distilling of rum, in the amount of eight hundred pesos; in the same price a house for the mill, zinc roofing, measuring twenty varas in length; in the same amount an iron cane mill; in two hundred pesos, five sugar vats; in one thousand pesos, a copper distillery, with serpentine of lead, and eighteen large casks for cane juice, with new mounting; in one hundred pesos, a certain extension or shed, zinc roofing, for a stable; in four hundred pesos a shed measuring thirty-five varas, with zinc roofing for bagasse, and the material contained therein, in two hundred pesos; in one hundred pesos a masonry well twenty varas in depth with a draw for the watering of cattle; a copper pump, in forty pesos; a dwelling house with galvanized iron roofing with its kitchen, in six hundred pesos; a house for the store, in two hundred pesos; one house inhabited by the manager, in fifteen hundred pesos; a cart in fifty pesos; four carts and boxes, in two hundred pesos; a house, straw thatched, in one hundred pesos; another house for peons, in the same amount; one plough, and another farming implement (fullosa) in forty pesos;
eight yokes, in four pesos; eight chains in eight pesos; two
342 cultivators in fifty pesos; three empty hogsheads for rum in twelve pesos; two empty hogsheads, on wheels, for water, in sixty pesos; fifty cuerdas of cane, newly planted, at sixty pesos each, in three thousand pesos; fifty cuerdas of rattoon cane, at thirty pesos each, in fifteen hundred pesos; twenty cuerdas for seed, in one hundred pesos; forty cuerdas of land, ploughed, at eight pesos, in three hundred and twenty pesos, and two cuerdas of rice about coming into bearing, in one hundred pesos; these items making a total of thirty-one thousand eight hundred and eighty-four pesos, as more fully set forth in the entry made at folios 80 to 81 of the said proceedings, and to which I refer. The boundaries of said property are as follows: On the east by Don Nicolas Telemaco, Don Beningo de Santiago, Sebastiana of the same sur name; on the north by Doña Isabel Siaca and the plantation Convento; on the west by Don Enrique Garcia, Nieves Perez and Alberto Despian; and on the south by Don José Antonio Becerril, Don José Lopez, the Sucesion of Albert Western, and the road leading from Fajardo to Luquillo.

That by order of the 18th day of October of the said year seventy-six, a public sale of the property attached, as aforesaid was directed, for the payment of the principal, and for costs of the plaintiff, as well as for covering also the amounts due on the other credits of Don Jose Manfredi and Eusebio Ramos, and the 20th day of November following was set as the day for the sale. Upon the publication of notices, as provided by law, in the official newspaper, (folio 82 over, 84 and 85) and edicts on public places (folio 91); the sale was

held on the said day, the only bidder being Don Jose Avalo Sanchez,
who offered to take possession of the amount of three thousand
343 three hundred pesos that was on deposit, and with it, and
with the offer which he was making in the sale, cover the mortgage credit of Messrs. James Mathews & Company, Don Jose Manfredi, Eusebio Ramos, and Don Cristobal Andreu, for the total of which the property was being sold, and presenting within the term of one month the respective receipts or releases therefor, paying also in cash all the costs incurred in the several executory actions which on that date were being prosecuted against the plantation and in insolvency proceedings, a condition precedent being the possession of the property for a survey thereof within thirty days, the expenses of which he was also willing to pay; and no other bidder having made his appearance in the Municipal Court of Fajardo (folios 92 and 95) and upon entry being made at folios 98 over and 99, by the order of the Court which so directed in a writ dated the 22nd day of the said month and year, of the amounts for which execution was being made against Don Monserrate Garcia, according to which there was due to Don Jose Manfredi six thousand and seventy-six pesos and ten centavos, as principal, and four hundred and eighty-six pesos and eight centavos, as interest; to Eusebio Ramos; eight thousand nine hundred and ninety-nine pesos and eleven centavos; to Don Cristobal Andreu, three thousand pesos; to J. H. Cooper & Company, (representatives of James Mathews & Company), five thousand two hundred and thirty-two pesos and seventy-six centavos of the principal, and three hundred and sixty-six pesos and twenty-four centavos, interest, all of which said amounts make a total of twenty-four thousand one hundred and sixty pesos and twenty-nine centavos.

That by writ of November 24th of the year of which mention has
been made, the aforesaid sale was approved in favor of Don
344 Jose Avalo Sanchez, who was granted the term of thirty days
which he had asked for to be reckoned from and after said date in order to file with the Court the receipts or releases of the payments made to the creditors, Manfredi, Andreu, Ramos and Cooper, placing him in possession of the plantation and of the appurtenances thereof, which was done by the Justice of the Peace of Fajardo, who gave possession to the successful bidder of the said plantation, on the 20th day of December (folio 108).

That at folio 125 there is an entry signed by the aforesaid creditor, Manfredi, stating to the Justice of the Peace of Fajardo, and signed also by his witnesses, that his capital and interest are paid for; in view of which, the Court under writ dated the 2nd day of December, ultimo, directed that an order issue to the annotator of mortgages for the cancellation of the mortgage prosecuted in favor of Manfredi, which was done on the third day of the same month, at folio 35 of book 12 of Fajardo (folio 127 over); and upon motion filed on the 12th day of the said month praying for an order to be directed to the Municipal Judge of Luquillo, to notify Don Monserrate Garcia for the purpose of executing the instrument of title to the successful bidder within the term of forty-eight hours, and

otherwise to be executed officially by the Court, and stating further that Messrs. J. H. Cooper and Company were paid in full for the credit of their principals, Messrs. James Mathews and Company, and asking that an order issue to the municipal judge of Naguabo for them to state whether or not they ratified the said statement the Court issued a writ on the 12th day of the said month, summoning the said Garcia to execute the instrument of sale of the
345 plantation Bello Sitio within the term of three days, with notice that failing to do so it would be executed officially. And upon return made of the order issued to the municipal judge of Naguabo on the 12th day of December for the notification of J. H. Cooper & Company, and to the municipal judge of Luquillo for the notification to Don Monserrate Garcia, the summons on the latter having been served on the 16th of the said month, the representative of the successful bidder filed a petition for the official execution by the Court of the aforesaid instrument of title, inasmuch as the said Garcia had failed to do so, and in an additional prayer he asked for an order of cancellation of the incumbrances existing in favor of the creditors, which would not be covered with the proceeds of the sale of the mortgaged plantation, and an order in duplicate was issued the same day, the 2nd instant, providing for the execution of the instrument by the court, officially, and also providing for the issuance of the order asked for in the additional prayer, which was done on the same day, all as more fully set forth in the record herein referred to, the original of which I have before me, and has been carefully examined by me for this true and correct statement, in all its parts, and to which I refer.

The preceding statement having been heard by the aforesaid Judge of First Instance, he stated: That in use of the royal ordinary jurisdiction which he exercises, and under the provisions of the second part of Article 989 of the Law of Civil Procedure in the name and on behalf of Don Monserrate Garcia y Ramirez, he executed in favor of Don Jose Avalo Sanchez a real and absolute sale in perpetuity of the said sugar cane plantation named Bello Sitio, situated in the barrio of Quebrada Fajardo, under the boundaries and with the number of cuerdas, and with the buildings,
346 machinery and plantations hereinbefore stated in detail, without incumbrances of any kind placed thereon by its previous possessor, Don Monserrate Garcia, by reason of the cancellation thereof, and with only one lien for the amount of six thousand pesos imposed by the said Avalo Sanchez in favor of Don Leonardo Planas, resident of Fajardo, as shown by the certificate of the annotator for this district, which he exhibits to me, and I attach to the vouchers under number first, to be inserted in such copies of this instrument as may be issued, and for the same price that he offered at the sale, and under the obligations that he then contracted as regards the credits that encumbered the property, and interest thereon, as well as the costs which he bound himself to pay.

And there being present in this act Don Jose Avalo Sanchez, married, forty years of age, agriculturalist, resident of Fajardo, in

transit in this town, who is known to me, and who produces his cedula, stub number 80, which I return to him, knowing all the contents of the foregoing, stated: That he accepts the same in all its parts, as it is a true statment from the entries in the record and of the obligations contracted by him at the sale.

They so covenanted respectively, and is signed by His Honor, and by the successful bidder and acceptor, together with the witnesses, present, residents, of lawful age and not legally disqualified to act as such and who are known to me, the same being Don Jose Faustina de Gorbea and Don Tomas Muñoz, penmen, after I read to them in full this instrument in a loud voice, as they did make use of that right, either the parties or the witnesses, they all signing before me, and I certify to all the contents of this instrument. Jose Ygno. Beyens.—Jose Avalo Sanchez.—Tomas Muñoz.—J. F. de Gorbea.—Signed, Eugenio de Torres, Notary.

347 *Voucher No.* 1.

I, the undersigned, acting annotator of mortgages for the district of Humacao, do hereby certify, having before me the books of annotations under my charge: That a sugar cane plantation named Bello Sitio, situated in the barrio of Quebrada Fajardo, in the municipal district or Fajardo, bounded on the east by Nicolas Telemaco, Don Benigno and Sebastiana de Santiago, on the north by Doña Isabel Siaca and the plantation Convento, on the west by Don Enrique Garcia, Nieves Perez and Alberto Despian, and on the south by Don Jose Antonio Becerril, Jose Lopez, Sucesores of Alberto Western, and the road leading from Fajardo to Luquillo, composed of four hundred cuerdas of land with all its plantations, buildings, machineries and all the other appurtenances thereof, said to be the property of Don Monserrate Garcia, and which is actually of Don Jose Avalo Sanchez, under public sale, in the Court of First Instance of this District, by him acquired, only reports an incumbrance of six thousand pesos imposed by the said Avalo Sanchez in favor of Don Leonardo Planas. Humacao, January 5, 1880.—Eugenio de Torres, Acting Annotator.

I, Antonio Aldrey y Montolo, Notary Public of the Island of Porto Rico, with residence, vicinity and office open in this city, seat of the notarial district and archivist general of protocols for the District of Humacao,

Do hereby certify: That the foregoing is a true and correct copy from the original of its contents existing in the general archives of this office of notary under my charge, and to which I refer.

348 In testimony whereof, and on petition of Mr. Henry F. Hord, I issue this copy under my hand and signature in three sheets of notarial paper of my own use, affixing at continuation hereof an internal revenue stamp of the value of fifty cents as provided by the Notarial Law, and making entry of the issuance of this copy in Humacao, this 12th day of November, 1908. Antonio de Aldrey, Notary.

Internal revenue stamp of the value of fifty cents cancelled by the seal of the notary.

A true and correct translation.

P. DE CASTRO,
Interpreter and Translator.

349 EXHIBIT I FOR THE PLAINTIFF.

Mortgage Deed Granted by Don Jose Avalo Sanchez in Favor of Mrs. Maria Diaz y Siaca on May 28, 1885, *and Executed Before Don Jose Celestino Scroeder y Monsanto, Notary of the Illustrious Territorial College of this Province.*

Fifty-seven.

Mortgage Deed.

In the town of Fajardo, Province of Porto Rico, on the twenty-eighth day of May, one thousand eight hundred and eighty-five, before me Jose Felix Camuñas y Fragoso, a notary of the territorial college of this Island, a neighbor and resident of said town, with offices located in house number twelve, Pino Street, and before the witnesses whose names will be given at this end, appear:

As party of the first part: Mr. Jose Avalo Sanchez, a planter residing at Fajardo, married, forty-six years of age, and an agriculturist by profession.

And as party of the second part: Mr. Juan Vaamonde y Lopez, also of the same neighborhood, of legal age, and a store clerk by profession, both having their certificates of identification (cedulas) which are duly presented to me and returned to them, issued by the Municipal Mayor of this District for the present fiscal year, said certificates being of the fourth class, that one belonging to
350 Mr. Avalo Sanchez, and of the fifth class the one belonging to the party of the second part. I certify that I am acquainted with both and to the truth of their profession and residence. Mr. Avalo Sanchez appears in his own right and Mr. Vaamonde y Lopez appears as the attorney-in-fact of Mrs. Maria Diaz y Siaca, a widow, of legal age and engaged in the mercantile business in this town, under the firm name of "Viuda de Veve", of which town she is a resident, said power of attorney having been granted before me on the ninth day of July, one thousand eight hundred and four, and which is before me for the purposes of executing this deed, and which contains among other clauses, the right to direct, control and administrate the mercantile firm which under the name of "Viuda de Veve" exists in this town, having the power to advance or take money or effects as loans or on credit, with interest, guaranty, mortgages or signed securities, or without such guarantees or interests, or in exchange for fruits, given and taking or entering into contracts, obligations, deeds and other kinds of

public or private documents as guarantees, specifying therein the price, terms and other conditions thereof.

By the above stated, and both parties assuring me that they are in the full enjoyment of their legal rights, is proven, in my judgment that they have the requisite legal capacity to formulate this deed recognizing and confessing the debt, the payment of which is obligatory, with interest thereon, and with a voluntary mortgage, for which they state:

Property.

First. That Mr. José Avalo Sanchez owns in his own right the following rural real estate, to wit:

A sugar cane plantation known as "Bello Sitio", situated
351 in the ward of "Quebrada Fajardo", municipal district of Fajardo, composed of four hundred acres (cuerdas) of land, equivalent to one hundred and fifty-seven hectares, twenty-one areas and fifty-nine centiares, with its buildings, machinery, ranches, engine house, living house, and house for store and for laborers, and with the plantations of cane, carts, ox-carts, oxen and other appurtenances used in the cultivation of the land, said land being bounded on the north by the property of Mrs. Isabel Siaca and by lands of the plantation "Convento" belonging to Mrs. Pilar Becerril y Torres; on the east by land of Nicolas Telemaco and by lands of Mr. Benigno and Mr. Sebastian de Santiago; on the south by the property called "Ausubal" belonging to the Succession of Mrs. Alejandrina Becerril y Torres, with lands belonging to Concepcion Lopez and by the property belonging to the Successors of Alberto Western and the Luquillo-Fajardo road; and on the west by lands belonging to Mr. Enrique Garcia and those of Nicolas Perez and of Mr. Gervasio Rivera.

Titles.

The above described property belongs to Avalo Sanchez by virtue of a judicial deed of sale granted to him by the Judge of the Court of First Instance of Humacao, Mr. Jose Ignacio Beyens y Gomera, in the name of Mr. Monserrate Garcia y Ramirez who had been a resident of Farjardo, under date of January fifth, one thousand eight hundred and eighty before the Notary Don Eugenio de Torres y Ramos, by virtue of a public sale of said plantation by reason of foreclosure proceedings against said Monserrate Garcia in several executory proceedings for the collection of debts, all of which he
(Sanchez) proves by the deed of sale of said property itself
352 which he presents to me and which I return to him, said deed of sale being executed by the said Notary Torres Ramos on the same date in which it was granted, and being registered in the Registry of Property of the District, at folio forty-three of the Municipality of Fajardo, property number nine, first inscription.

Liens.

From the above mentioned Title and from the entries in the Archives of the Notarial Office, only documents which the grantor

herein claims to possess, there appear the following liens, encumbrances or charges against the above described plantation *are:*

First. Voluntary mortgage for a debt of 6,000 pesos in favor of Mr. Leonardo Planas; Second, Mortgage bond in favor of the Honorable President of the Honorable Royal "Audiencia" for this Island, to answer for the amount of 2,250 pesos for the faithful performance of the duties of Registrar of Property of Humacao, which position was then filled by Mr. Ignacio Beyens Gomera; and Third, Mortgage bond in favor of said Honorable President of said "Audiencia" to answer for the performance of the same duties when a similar position was occupied by Mr. Jose Sastraño Belaval in the Districts of Aguadilla and Humacao and also for the same amount of 2,250 pesos.

Value.

From the above mentioned titles it appears that said property was bought for the amount of 24,160 pesos and 29 cents, but in consideration of the improvements made in the plantation, same is valued today by the contracting parties at 40,000 pesos.

Second. That the above mentioned Mr. José Avalo Sanchez having carried an open account with the business firm of "Viuda de Veve" which is represented by the other party to this instrument,
353 Mr. Vaamonde, and different sums of money having been advanced to him to carry on the season's work on his said plantation "Bello Sitio", when said account was balanced on the 18th instant, there stood against Sanchez 5,600 on his account balance with said firm.

Third. That notwithstanding this debt is for an account overdue, the parties hereto have agreed that Mr. Sanchez will have two years' time in which to cancel said debt of 5,600, which shall be paid in two instalments, one at the end of each year, without interest, unless he fails to pay at the time herein agreed in which event there shall be paid upon said payments interest at the rate of one per cent per month, it being understood that no extension of time will be granted unless agreed to by the party to whom the money is owed, Sanchez guaranteeing this debt with a mortgage on his plantation "Bello Sitio". The latter is to pay also all expenses incurred in the granting of deeds on account of this agreement, and for the copies of same, legal paper, certificates and inscriptions in the Registry of Property.

Therefore and carrying into effect said agreement, by the present deed the parties above mentioned, Mrs. Maria Diaz y Siaca, widow of Veve, through her attorney-in-fact Mr. Juan Vaamonde Lopez and Mr. José Avalo Sanchez in his own right, grant this deed acknowledging and confessing the guaranteed debt, which is to be paid in instalments, with interest in case of default of payment at the time agreed upon, and by a mortgage upon the following bases and conditions:

First. Mr. Jose Avalo Sanchez acknowledges that he owes to Mrs. Maria Diaz y Siaca widow of Veve, the amount of 5,600 pesos current money, which amount has been advanced to him as a loan in the

manner described in the second paragraph of the Intro-
354 ductory Clauses of this deed, and as the balance of all his accounts with said mercantile firm, which amount he confesses to have truly received in cash. In view of the above, I, the Notary, state for the better understanding of said parties that, acknowledgment or confession having been made as it hereby is made, of the delivery and receipt of said loaned money, no exception can be taken or raised as to the certainty of said acknowledgment, the property described being responsible for the fulfillment of the obligations entered into by this contract, and the mortgage thereon being clear from any responsibility, even should it be proved later that the delivery of said amount in whole or in part was not a fact.

Second. This loan is made without interest; but if any of the dates for the payment of said instalments, which are to be decided upon, should go by and payment be not made, in such event the debtor shall pay one per cent per month on the amount owed, it being understood that the time for the payment of this debt shall not be extended for a period longer than the time which the party in whose favor this mortgage is executed, shall determine. In view of the above, I, the Notary, notified the contracting parties of the right they possessed to stipulate whatever interest they may desire without being subject to any legal rate, and that the interest agreed upon will not be guaranteed by this mortgage unless the same is expressly stated in the present deed and in the inscription thereof to be made in the Registry of Property. I also notified the creditor party that under the terms of this deed she cannot exercise any action to the prejudice of third parties for the collection of interest overdue except the interest corresponding to the two preceding years and the amount due for the current year, although she will have the right to bring personal action against the debtor to secure
355 from him the interest of the previous years and to request in that event that the mortgage be amplified.

Third. The present loan is made for the term of two years beginning the 18th day of May instant, and will become payable on the 18th day of May, 1887, and within that time Sanchez shall pay the acknowledged debt for the amount of 5,600 pesos in the following manner, to wit: Half of it; that is to say 2,800 pesos on the 18th day of May, 1886; and the remaining half, 2,800 pesos on the same day of the year 1887, to be placed at his own expenses on the creditor's desk in this town, Calle Real, where she now lives, or at any other house which then may happen to be occupied by her, her successors or assigns, on the date in which each of said payments falls due, and in case of such change of residence taking place, the debtor shall be duly notified, the latter designating this town as his residence for the purpose of having served upon him here any notice, summons or other process which may be brought about by this contract.

Fourth. To guarantee said loan Mr. Jose Avalo Sanchez executes a voluntary mortgage for the amount of 5,600 pesos which he has already received, for the interest in said amount in case same shall

become overdue, at the rate agreed upon of one per cent per month, and for the expenses incurred for deeds, copies of same, legal paper, inscriptions in the Registry of Property and for expenses and costs in case of litigation for which the amount of 800 are devoted, on the plantation "Bello Sitio," which has already been described together with all appurtenances and properties, and shall remain encumbered by this mortgage until said obligation has been fully dis-
356 charged.

Fifth. Express reservation is made in favor of the State, the Province and the Municipality of Fajardo who will have preferred rights over any other creditors, for the collection of the last year's tax already imposed but still uncollected on the mortgaged plantation, which said plantation is not insured against fire.

Sixth. Notice is hereby given that copy of this mortgage deed should be presented for the inscription thereof in the Registry of Property of this District, and that unless this requisite is complied with, said mortgage will not be admitted before any Court, or any ordinary or special tribunal, nor in the Councils or Government offices, except in the case provided for by Article 13 of the Mortgage Law of Porto Rico.

Under these clauses and conditions they execute this agreement, to the exact fulfillment of which the contracting parties bind themselves, under penalty of incurring the costs, expenses and other damages to which they might subject themselves.

They so grant and sign in my presence, together with the witnesses Mr. Pedro Maria Rodriguez and Mr. Agustin de Arce, of this town, after the same had been read to them by me and they had been notified of their right to read it each by himself, which said right they waived, to all of which I certify. Jose Avalo Sanchez. J. Vaamonde Lopez. Pedro M. Rodriguez. Austin De Arce. (Signed) Jose Felix Camunas.

NOTE.—On the same date I issued a first copy in four pages of paper, the first having the Seal No. 574 and the others Seal 11th, Nos. 130,460-130,461 and 130,462, requested by the party granting the mortgage. I certify. Camuñas.

NOTE.—Fajardo, February second, one thousand eight
357 hundred and ninety-four. On this day and by virtue of judicial order issued by Romulo Villahermosa y Boarao, Judge of First Instance of this District, to his clerk, Mr. Carmelo Martinez, under date of December thirty-first, ultimo, I issued copy of this deed, which was written on legal paper, according to the order of said Judge, said legal paper being marked numbers 2,600,285 and 86-823,901 and 2-823,903 and 4, the first page containing said order of said Judge. I certify—Lara.

Mr. Jose Celestino Schroeder y Monsanto, Notary of the College of San Juan, Porto Rico, a neighbor and resident of this town of Fajardo:

I certify: That the above copy agrees with its original which under the name given is filed in the Archives of this Notarial Office, under my charge, to which I refer. And at the request of Mr. José Avalo Sanchez, I issue said copy using four sheets of legal paper,

notice of the issuing of said copy being taken, at Fajardo, January tenth, one thousand nine hundred and two.

(Signed) JOSE C. SCHROEDER, *Not.*

Notarial Seal over I. R. Stamp concelling same.

Fees in accordance with the Regulations in force.
Comparing, custody, notice of entry and stamp supplied, $13.50.

358 EXHIBIT J FOR THE PLAINTIFF.

Translation.

Number 256.

Instrument of Judicial Sale Executed by the Judge of First Instance of This City in Favor of Dona Maria Diaz y Siaca, Humacao, Porto Rico, Seat of the Notarial District, December 18, 1891.

359 Translation.

Number 256.

In the City of Humacao, on the eighteenth day of December, eighteen hundred and ninety-one, before me, Don Marcelino Estevanez Nanclares, Notary of the Territorial College of the Audiencia Court of Porto Rico, with residence and vicinity in this seat of the notarial district, Appear

Don Romulu Villahermosa Borao, Judge of First Instance for this city and the district thereof, and

Don Juan Vaamonde y Lopez, of lawful age, business clerk, resident of Fajardo, supplied for the current fiscal year with his personal cedula of the fifth class, number ten of the stubbook: Señor Vaamonde appears herein as a representative and attorney in fact of Doña Maria Diaz y Siaca, widow of Veve, a resident of Fajardo, under the power of attorney which she granted by public instrument executed before hte notary of that town on the ninth day of July of the year eighty-four, which capacity he avers he still has and will be duly shown in the registry, and also that he is in the full enjoyment of his civil rights, for all of which, in my judgment, the parties hereto have the legal capacity necessary to execute this instrument of judicial sale of rural property in virtue of a public sale, and therefore, of their own free will, they state:

First. That under date of February eleventh of the year eighty-nine, solicitor Borges, as attorney in fact and representing the widow of Veve, of the town of Fajardo, brought an executory action against Don José Avalo Sanchez, a resident of Fajardo, for the payment of an indebtedness of five thousand six hundred pesos, current
360 money, and interest agreed to, which indebtedness was secured by a mortgage executed before Don Jose Felix Camuñas, Notary of Fajardo, on the 28th day of May of the year eighty-

five, which mortgage was constituted in favor of the lady creditor by the debtor Sr. Sanchez, on a plantation of his named "Bello Sitio" devoted to sugar cane, and situated in the barrio of Quebrada Fajardo, in the municipal district of Fajardo, which measures four hundred cuerdas of land equivalent to one hundred and fifty-seven hectares, twenty-one ares and fifty-nine centiares, with the buildings thereon appertaining thereto, machinery, sheds, furnace house, mill, dwelling house, store-house, and peons' house, sugar cane plantations, carts, oxen, and all other appurtenances and farming utensils: It is bounded on the north by property of Doña Isabel Siaca and lands of the plantation Convento of Doña Pilar Becerril y Torres, by lands of Don Jose Concepcion Lopez, I mean, on the east by the plantation of Nicolas Telemaco and lands of Don Benigno and Sebastiana de Santiago; on the south by the property Ausubal of the Sucesion of Doña Alejandrina Becerril y Torres, by lands of Don Jose Concepcion Lopez, by lands of the Sucesores of Alberto Westen and the road from Luquillo to Fajardo; and on the west by lands of Don Enrique Garcia, Nicolas Perez and Gervasio Rivera, which said mortgage is recorded in the Registry of Property for this District in Volume 2nd of the same, 1st of the municipality of Fajardo, folio 45, Property No. 9, Registration 3rd; that in virtue of the said action and by writ of this Court of First Instance, dated the twentieth of the said month of February, it was ordered that execution issue and did issue against the properties of the debtor, upon first notifying him to make payment without the same having been made, and, therefore, under date of the twenty-first an attachment was levied on a sugar cane plantation (rural property) situated in the barrio of Quebrada Fajardo, in the municipal district of Fajardo, composed of four hundred cuerdas of land, equivalent to one hundred and fifty-seven hectares, twenty-one ares and fifty-nine centiares, together with its buildings, machinery, sheds, furnace house, to which there is attached the train of caldrons and boiler, mill, molasses house, house for sugar vats, dwelling house, storehouse, and other houses for peons, sugar cane plantations, carts, oxen, and all other appurtenances and farming implements appertaining thereto, which said perimeter is bounded on the north by the property of Doña Isabel Siaca and lands of the plantation Convento of Don Pilar Becerril y Torres; on the east by property of Nicolas Telemaco and lands of Don Benigno and Sebastiana de Santiago; on the south by the property named Ausubal of the Sucesion of Doña Alejandrina Becerril y Torres, by lands of Don Jose Concepcion Lopez, of Sucesores of Alberto Weston, and by the road from Luquillo to Fajardo; and on the west by lands of Don Eugenio Garcia, Nicolas Perez and of Don Gervasio Rivera, and furthermore an ox marked on the left horn with initials "J. A. S." another marked on the left horn "J. A. S.," one bay ox marked on the same horn "M. C.," another one ditto, without brand, one "indio" ox marked on the right flank with the letter "A," one bay ox marked on the right side "A. E.," one bay ox marked "V. 2" upside down, one yellow indio ox marked on the right flank "S. J.," one yellow

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indio without brand, one indio ox branded on the right horn
362 "J. A. S.," one yellow indio branded on the right horn "J. A. S." indistinct; one yellow branded on the right horn "J. A. S.," one yellowish bay branded "A. G." upside down and indistinct, one reddish (candela) branded on the right horn "J. A. S.," and on the right flank "J. C." indistinct; one "hosco" ox without brand, one "horsco bragado" branded on the left flank "L," one hosco "candela" ox branded on the right flank "S. H.," one yellow indio ox branded on the right horn "J. A. S.," one yellow hosco ox without brand, one yellow hosco with right horn broken, one bay with a star without brand; one bay hosco marked on the right flank "V 2," one indio bragado ox branded on the right flank "V 2," one bay with a star marked on the right flank "T. G.," one yellow indio ox branded on the right flank "J. G.," one hosco indio ox marked on the right flank "V. Q.," one bay white tailed ox branded "S. C." on the right flank; fourteen cars with wooden axles, two carts for straw; twelve plows of different styles; twenty empty sugar hogsheads; forty-five bundles of secondhand staves with bottoms and tops; six unmounted trusses for loading sugar; one wheel for mixing clay; one hundred and thirty-two cuerdas of growing cane of several sizes and different age; thirty-three cuerdas of cane recently planted; and further, in the molasses house, or rather in the sugar vats, twenty-one hogsheads more or less of manufactured sugar; that Don Rosendo Bas of the same vicinity was appointed Receiver (depositario) of the said properties, attached as aforesaid, and that the debtor Sanchez was summoned to appear at a public sale on the same day, the 21st and under date of the second day of March, on petition of the party plaintiff; that the fruits attached were placed under judicial administration pursuant to the provisions of Section 1148, and that
363 the said Receiver Don Rosendo Bas had been appointed administrator, and that it was ordered that a cautionary entry of attachment be made, under date of March second; that the debtor Sanchez made opposition thereto and that on the same day the plaintiff filed a petition for default of the said debtor; that the debtor asked for the nullity of the attachment on the ground that it was excessive, which was denied on the same date; that a motion to intervene was filed in the name of Don Gabriel Arruza, as a third party, under date of the seventh, and the court ordered the suspension of the executory proceedings upon arriving at the point for the public sale and that a separate piece be made, of which writ of reposition was asked by the debtor, and as to which the following order was entered:

Humacao, March twelfth, eighteen hundred and eighty-nine.—The remedy of reposition having been filed in time and form, let a copy of the petition be served to the party of the other side so that within the term of three days the said party may make opposition to the same if deemed convenient to his rights.

On the twelfth day of March aforesaid, the debtor, Señor Sanchez asked for judgment, declaring that the order of execution be dismissed, and that the attachment levied be raised with costs taxed against the plaintiff, and by order of Court of the fourteenth of the

same month, the matter was referred to the party plaintiff for the term of four days to propose an answer as to what may be convenient to his interest, which was notified to the parties on the same day, and the record was referred to solicitor Borges on the fifteenth, and was returned by him on the twentieth of the same month with a petition in opposition praying the court to overrule the de-
364 murrers of payment and innovation propounded by the plaintiff, render judgment of sale, and proceed with the execution, and by order of the twenty-eighth of the same month, it was provided that a copy of the said petition be delivered to the party, and that the case be opened for the introduction of evidence for a term of ten regular days, to the parties, during which time they might introduce the evidence already offered and such as they may deem convenient to their rights, which was notified to the parties on the twenty-ninth, with summons for the introduction of evidence.

By petition dated the fifteenth of March, the plaintiff prayed for a dismissal of the reposition asked for and by order of court of April thirteenth it was held that the remedy of reposition of the order of March twelfth, ultimo, was proper, and that the attachment should be raised, and further providing that the said attachment be again levied on the plantation above referred to and on the houses and factories thereon, but not on the machinery, boiler, fruits, oxen, etc., as that property was more than sufficient to secure the indebtedness of the plaintiff, and was especially mortgaged, leaving without effect the proceeding under which the depositario was appointed, of which order the party plaintiff asked for a suspension of the execution thereof, which was not granted, and an appeal was taken, which, by writ of April sixth, was admitted as to one effect only.

By writ of April eighth the formation of a separate piece for the evidence to be introduced by the parties was ordered.

By petition of April tenth, the party plaintiff made the claim, which is authorized under Section 384 of the Law of Civil Procedure, and asked that the appeal from the order of the third be admitted as to both effects, and offered to furnish the proper bond; by
365 order of the eleventh the bond was fixed in the amount of five thousand pesetas to be deposited in the Royal Treasury within the term of six days. By petition dated April tenth, and for the purpose of the provisions of Article 390 of the Law of Civil Procedure, the plaintiff asked for several certified copies, which said plaintiff designated, and the same were denied by order of the twelfth.

Under date of the thirteenth the party plaintiff asked for a communication from the Collector of Customs in order to deposit in the Royal Treasury the amount of the bond asked for, which was granted by order of the fifteenth, and under date of the sixteenth the party plaintiff asked that the bond fixed be deemed to have been given, accompanying the receipt therefor, and that the appeal be admitted as to both effects, from the order of the third of the same month, which petition was filed by the solicitor under date of the twenty-third, for which reason, under date of the twenty-fifth the admission of the bond was denied together with a dismissal of the petition and return

of the receipt, which was also solicited by the debtor in his petition of the twenty-sixth, I mean, of the twenty-third, and the party plaintiff having asked for a reform of the writ, the same was denied by writ of the twenty-seventh of the said month, with costs taxed against said party in the said remedy. And the party plaintiff having asked on April twenty-sixth that the evidence be attached to the record, it was so done as per entry made under date of the twenty-ninth.

By petition of May first, solicitor Borges was substituted for solicitor Berrios as the representative of the party plaintiff.

By order of court of May tenth, it was ordered that the
366 record be brought for hearing and the parties summoned for judgment, which was also solicited by the plaintiff, and under date of May sixteenth judgment was rendered, the effect of which is as follows:

I adjudge that I should declare, and do declare, that no order of execution should issue, and in consequence I command that the attachment levied on properties of Don Avalo Sanchez be raised with all the costs taxed against the plaintiff, Sra. Vinda de Veve, and let the Scrivener be careful not to again incur in such offence as the inversion of the rolls of evidence. Thus, by this judgment, he so pronounced, commanded and signed. Jose Ruiz, which said judgment was read and published in the court on the same day.

Under date of the seventh, the party plaintiff took an appeal from the aforesaid judgment, which appeal was admitted as to both effects by writ of the twenty-second, providing for the ransmittal of the original record to the higher court, which was done.

Under date of the twenty-third of the same month, and on the third day of November of the year ninety, the Most Excellent the Territorial Audiencia Court rendered judgment number thirty-nine, the provisions of which are as follows:

"We adjudge that we should revoke, and do revoke, the writ of April third, eighteen hundred and eighty-nine, from which the appeal was taken, with costs taxed in this incident on the first instance against Don Jose Avalo Sanchez, and on the second instance, without special condemnation. And in consequence with the necessary excerpts, let an order issue in due time to the Judge of First Instance of Humacao, to the end that the attachment of the properties be placed in the condition in which it was at the time of the
367 issue of the writ hereby revoked, dated April third. Thus by this, our judgment, we so pronounce, command and sign, which said judgment was recorded under number 9, and reads as follows: Entry hereof is made leaving in this office in two and one-half sheets of official paper the copy provided under Article 850 of the Law of Civil Procedure. Porto Rico, March twenty-fourth, eighteen hundred and ninety-one. The Canciller, Miguel Muns."

On the first day of April, of the year ninety-one, solicitor Bajandas filed a petition on behalf of the widow Veve asking for the enforcement of the order of the Superior Court in the aforesaid judgment, for which purpose a communication should be addressed to the Municipal Judge of Fajardo commanding him to proceed to attach the machinery, boiler, fruits, oxen, carts and farming imple-

ments of the plantation "Bello Sitio," the property of the debtor, Sr. Sanchez, and all other property pertaining thereto, upon designation by the creditor, placing the same in deposit with Don Rosendo Bas, and adopting all the proceedings necessary until all things are put in the condition in which they were prior to the reduction of the attachment of the said plantation, which was ordered by the Court on the eleventh day of April. And a petition having been filed the same day by the debtor, Sr. Sanchez, claiming the executory record hereinabove referred to and that the petition of lawyer Belaval should not be admitted as he is a resident of Arecibo and he has not shown the payment of the tax as such, and because he is a relative of the party plaintiff, the Court ordered under date of the fourteenth to abide as to the main petition by the provisions of the order of the eleventh, and that the lawyer, Sr. Belaval, should show the payment of the tax and his relationship with the party plaintiff. And an appeal having been taken
368 by the debtor asking for a reform in the sense stated in the second additional prayer of the petition, the same was denied as no provision of law was cited as having been violated.

On the sixteenth day of April the defendant asked for a nullity of the proceedings, which was denied by order of court of the seventeenth, and at the same time the municipal judge of Fajardo was commissioned to proceed to the attachment of the machinery, boilers, fruits, oxen, carts, and farming implements of the plantation "Bello Sitio" and of all such other property as may belong thereto, and to place the same in deposit with Don Rosendo Bas.

On the seventeenth day of April, the party debtor filed a petition asking that solicitor Bajandas be instructed to return the aforesaid communication to the Municipal Judge of Fajardo, which was denied on the same day by the court, and thereupon a remedy of reposition was instituted and was admitted under date of the 20th.

Acting on the aforesaid order, the Municipal judge of Fajardo levied the attachment as directed, as per attachment proceedings reading as follows: "With the consent of the aforesaid overseer, he proceeded to levy the attachment on the following utensils—machinery without pipes, with all the masonry foundations removed, consisting of a very old boiler in bad condition without whistle or gauge, a mill of three crushers with crowns, carriage and plates, and of the cylinder, fly-wheels, catherine wheel, one gear, and the necessary shafting; one furnace with masonry work destroyed and recent indications of the removal of three caldrons, and on the pawls, there being left one caldron (broken) only; on two wooden
369 vats for cooling sugar; one wooden box for sediment; one ditto for water; two wooden canals; four wooden boxes for molasses in the open air; one bagasse shed with galvanized iron roofing, old, measuring forty-five meters in front by nine meters in width, which said shed is full of bagasse, except at the extreme north where a little is missing, and which is situated next to the lands, with rail track through the center. Another shed roofed with shingles that measures forty-four meters in front by five meters in width, I mean, by five and a half meters in width; one building

for the caldrons, roofed with galvanized iron and inclosed with native lumber in bad condition, with two doors and a gate leading to the furnace doors missing; the said building measures twenty-eight meters in front by twelve meters in depth. A molasses house, destroyed, without roofing and without beams or fence, there existing only the lumber on the four sides. The beams of the roof and three partitions are completely uncovered from the supporting beams down, and the floor is also missing, and the said building, which is annexed to caldron house, measures fourteen meters in front by twelve meters in depth; on a circular shed which has been used for a mill, without fence, and roof with galvanized iron, measuring fifteen meters in diameter; the said roofing is all oxidized and perforated. A masonry smokestack, cracked from the top down, with five supports or wooden squares to prevent tumbling; a dwelling house of frame work, roof of galvanized iron with its porch in front and measuring sixteen meters in depth and nine meters in front, and a kitchen separate from it, with roof measuring four and a half meters in length and three meters in front; small bathhouse and latrine built the same as the house, measuring three
370 meters in front by four meters in depth; one carriage house with sides and roofing of the same material, with three meters in front by four meters in depth; one house for the overseer, roofed with galvanized iron, with wooden sides, which is in very bad condition and measures seven meters in front by nine and a half meters in depth; four houses for peons built of native lumber, thatched roof, each measuring four meters in front by five meters in depth; twenty-five rafters of several dimensions, all in bad condition. It is herein set forth that no attachment was levied on the crops, oxen, carts and farming implements because they were not found on the said property, and all the other utensils and buildings that have been attached, have been so attached upon designation by Mr. Vaamonde, Mr. Sanchez stating that the carts, oxen and implements which have not been found, have been sold by him. And there being nothing more that could be designated by the party for whom the attachment is levied, the bailiff in my presence, proceeded to deposit the said property with Don Rosendo Bas who accepted the office under the formalities provided by law; the said receiver or depositorio stated that as he could not personally attend with diligence to the property deposited with him, that he appointed as watchman with residence on the same property, the neighbor Vicente Fuentes, who could inhabit the overseer's house which exists on the plantation and which is now vacant. By which this proceeding is terminated and signed by the bailiff, the party hereto, Sr. Vaamonde, and by the receiver appointed, Don Rosendo Bas, Don Jose Avalo Sanchez and his overseer Don Miguel Correa, before me the Secretary, to which I certify: It is herein set forth that the material removed from the machinery is not from the foundations, but from the surface namely, the beams of the floor and the same as to the boiler, and that as regards the piping, there is only
371 missing the cold water piping, which Mr. Sanchez declares to have disposed of; and on the same date, the twenty-first of

the said month, the said attachment proceedings were transmitted to this Court of First Instance.

Under date of the twenty-third the party plaintiff asked for a full compliance with the judgment of the higher court and by writ of the twenty-fifth it was held that the reform solicited could not be granted, and taxing costs against the petitioner, for which reason solicitor Correra, on behalf of the debtor, Mr. Sanchez, took an appeal, which was denied by writ of May first.

By virtue of the appeal brought against the judgment of the 16th day of May of the year eighty-nine, dismissing the petition for an order of execution, and providing for the raising of the attachments levied on the properties of Don Jose Avalo Sanchez, and taxing costs against the party plaintiff, the Most Excellent the Territorial Audiencia Court, under date of the fourteenth of March of the year ninety-one, rendered judgment commanding as follows:

We adjudge that revoking the judgment appealed from we should order, and do order, that the said execution proceed for the amount of five thousand six hundred pesos, set out in the mortgage instrument filed by the party plaintiff, together with interest therein agreed upon, deducting the amount of nine hundred and ninety-two pesos and seven centavos, the payment of which has been proven, taxing costs in both instances against Don Jose Avalo Sanchez, without prejudice to such actions as he may be entitled to under
372 the titles or documents which he has produced, and a certified copy of the testimony of the witness Borges, dated March twenty-second of last year, which is set forth in the roll, and in the evidence, for Don Jose Avalo Sanchez, notifying the Court of First Instance of Humacao to proceed to the investigation of the subtraction of the document therein referred to, of the promissory note of Doña Carmen Diaz. Thus by this, our judgment, we so pronounce, command and sign. José Maria Larrasabal.—José de Armas.—Ramon A. de Soto.

Publication. The preceding judgment was read and pronounced by the Judge Reporter, Don Ramon Morera Soto, in the Audiencia Court this day, the sixteenth of March, eighteen hundred and ninety-one. Eduardo Rodeido."

And on the twelfth day of May, this Court ordered a full compliance with the judgment of the Superior Court, and that the said judgment be notified to the parties.

By petition of May ninth, the party plaintiff asked for the enforcement of said judgment, that an order issue to the Registrar of Property for a certificate of all liens on said property during the last thirty years, and that the party defendant be notified to produce his titles to the property, which petition was granted under date of the twenty-first, and under date of the twenty-second the following certificate was issued:

"I, Don Feliciano Piñol y Massot, Registrar of Property of Humacao and the District thereof, do hereby certify: That having examined the indices of the registry under my worthy charge and those of the old office for the annotation of mortgages, for the purpose of complying with the provisions of the preceding order, it has

been found that there are on the plantation "Bello Sitio" the following liens:

373 First. At folio 59 of volume 12th of Fajardo, of the old office for the annotation of mortgages, there is an entry reading as follows: Indebtedness. Don Jose Avalo Sanchez by instrument executed on the third day of December, eighteen hundred and seventy-nine, in Fajardo, before the Notary Don Jose Felix Camuñas, acknowledged to be indebted to Don Leonardo Planas in the sum of six thousand pesos, which the latter loaned him for his own urgent purposes, binding himself to pay the same at the rate of one thousand pesos per annum, in the months of May of subsequent years from the year eighty-one to the year eighty-six, inclusive, mortgaging as security, his sugar cane plantation named "Bello Sitio", composed of six hundred cuerdas situated in the barrio of Quebrada Fajardo, in the jurisdiction of Fajardo, bounded on the north by the plantation Convento, on the south by lands of Doña Carmen Siaca, on the east by Don Jose Becerril, Doña Petronila Feliciano and Juan de Santiago, and on the west by Don José Concepcion Lopez and Mariano Vargas. Humacao, December fifth, eighteen hundred and seventy-nine. Eugenio de Torres.

Second. That in the same volume, at folio 78 over, there is an entry reading as follows: Bond for two thousand two hundred and fifty pesos.—Don José Avalo Sanchez, by instrument executed before me as Notary in this day, binds himself as surety and principal, waiving the benefits of extension and order up to the amount of two thousand two hundred and fifty pesos, for the Registrar of Property for this District of Humacao, Don Jose Ignacio Beyens y Somora, as follows: Fifteen hundred pesos, which is the amount as provided by the Royal Decree of February twenty-eighth ultimo; seven hundred and fifty pesos additional, which is fifty per

374 cent of the aforesaid amount as provided in Article 384 of the General Regulations for the execution of the Mortgage Law in this Island for costs and expenses; which said amount of two thousand two hundred and fifty pesos remains at the disposal of the Most Illustrious the President of the Royal Audiencia Court of this Province to answer for the good discharge of the office of the said Registrar, to which the said Sr. Beyens has been appointed by Royal Order of November seventh, ultimo, mortgaging especially his sugar cane plantation named "Bello Sitio" situated in the barrio of Quebrada Fajardo, municipal district of Fajardo, composed of four hundred cuerdas, with all its buildings, machinery, plantations and everything else thereunto appertaining, bounded on the east by Nicolas Telemaco, Don Benigno and Sebastiana de Santiago, on the north by Doña Isabel Siaca and the plantation Convento, on the west by Don Enrique Garcia, Nieves Perez and Alberto Despiau, Don Jose Antonio Becerril, Don Jose Lopez, Sucesion of Don Alberto Weston, and the road from Fajardo to Luquillo, which has no other lien besides the one constituted today, than that of six thousand pesos in favor of Don Leonardo Planas, as set forth in the entry at folio 59, of this Registry. Humacao, January eighth, eighteen hundred and eighty.—Eugenio de Torres.

Third. That at folio 43, of volume 2nd of the archive, first of the municipality of Fajardo, property number 9, registration 2nd, there is a bond as security for that which the Registrar of Property for this District, Don Jose Sastraño Belaval y Alegre had to give for the said office, and in virtue thereof there is a mortgage constituted on the said property "Bello Sitio" for the amount of two thousand
375 two hundred and fifty pesos at the disposal of the Most Illustrious the President of the Audiencia Court, as per instrument executed in Fajardo on the thirteenth day of October, eighteen hundred and eighty-four, before the Notary Don Jose Felix Camuñas.

Fourth. That at folio 45 of the same volume, registration 3rd of the same property, there is an entry of a mortgage for the amount of five thousand six hundrd pesos, without interest, in favor of the widow Veve of the town of Fajardo, as per instrument executed in the said town on the twenty-eighth day of May, eighteen hundred and eighty-five, before the said Notary Don Felix, I mean Jose Felix Camuñas.

Fifth. That at folio 46 of the same volume, registration 4th of the same property, there is an entry of lease in favor of Don Gabriel Arruza Echevarria for the term of five years, maturing in the month of July of eighteen hundred and ninety-two, for an annual rental of one thousand pesos, as per instrument executed in this city on the eleventh day of April, eighteen hundred and eighty-eight, before the notary of the same, Don Marcelino Estevanez.

Sixth. That at folio 232 of volume 31 of the archive, fifth of the municipality of Fajardo, there is an entry of suspension through defects consultation on which is pending, in virtue of the attachment levied in the executory action between the widow of Veve against Don Jose Avalo Sanchez for the amount of five thousand six hundred pesos current money, of the principal, interest at one per cent per month from the eighteenth day of May, eighteen hundred and eighty-six, and eight hundred pesos for costs.

And not finding in this registry any more liens relative
376 to the property or plantation "Bello Sitio", I sign the present in Humacao, this twenty-second day of May, eighteen hundred and ninety-one.—Feliciano Piñol."

By petition of the twenty-second day of May, the party defendant asked for a reposition, and the petition was admitted on the same date.

On the twenty-sixth day of May the party plaintiff asked for an appraisement of the property attached, and on his part appointed Don Juan Labaggi as appraiser, and on the sixteenth day of June a writ was issued, the provisions of which are as follows:

"Lawyer Don Isidro Soto Nusa, the Judge of First Instance for this city and the district thereof, before me, the Scrivener, stated: The petition for a reposition of the order of the twenty-first day of May, ultimo, appealed from, is hereby dismissed, and the said order is declared in force in all its parts, and inasmuch as there is attached to the record the certificate of liens issued by the Registrar of Property for this District, let the appraisement of the property at-

tached, and named "Bello Sitio" belonging to Jose Avalo Sanchez, be made, for which purpose Don Juan Lavaggi has been appointed as expert by the widow of Veve, which appointment shall be notified to the party defendant so that in his name and within the term of two days he shall appoint his expert, with notice of holding him as agreeing to the appointment made by the party plaintiff; and as it appears from the aforesaid certificate that the property above referred to is incumbered with several mortgages constituted in favor of Don Leonardo Planas and the Registrar of Property,
377 Don Jose Sastraño Belaval and Don Ignacio Beyens, let them be notified of the condition of the executory action for the purposes provided in Article 1488 of the aforesaid Law of Civil Procedure. It was so ordered, commanded and signed by the aforesaid judge, to which I certify. Isidoro Soto Nusa. Before me, Jose Gab. Gonzalez."

That the party defendant appealed from the foregoing writ in both effects, asking for a transmittal of the original proceedings to the Superior Court, which said appeal was admitted on the eighteenth day of June, as to one effect only.

That on the sixteenth day of July the party plaintiff asked that inasmuch as the party on the other side had not appointed an expert, that the said party be deemed to have agreed to the writ appointing Sr. Lavaggi, and upon the acceptance of the latter, that he should proceed to the discharge of his duties, which was granted by the Court under date of the seventh, providing for an order to the Municipal Court of Fajardo, and thereupon the party defendant established a remedy of reposition, and under date of the twenty-third a writ was issued, the provisions of which read as follows:

"The reposition asked for is denied, and let the provisions in the writ and order of the seventeenth of July, I mean of the sixteenth of June, ultimo, and seventh of July, respectively, be complied with."

That upon the issuing of the order to the Municipal Court of Fajardo on the twenty-seventh day of July, the expert appraisement was made and the property attached was valued, in all, in the amount of sixteen thousand, four hundred and nine pesos.
378 That on the fourth day of August a public sale was ordered to be advertised for a term of twenty days, of the properties attached, for the amount of its appraisement, which sale was to be held in this city and in the town of Fajardo, simultaneously, on the twenty-ninth day of said month, which was advertised by edicts, and in the Official Gazette No. 96, and also in the newspaper "El Criterio" No. 362.

That on the eleventh day of August the party plaintiff asked for a liquidation of the mortgage under execution, and of the mortgage of Don Leonardo Planas, which amounted to fourteen thousand six hundred and forty-four pesos and fifty-two centavos, as per liquidation dated the 13th.

That on the 24th day of August the party defendant asked for a suspension of this case just in the condition in which it is at

present, which was denied by order dated the twenty-fifth, of which a reposition was asked for.

That on the twenty-ninth, which was the day fixed for the sale, the same was held, according to the record, a literal copy of which reads as follows:

"Acta.—In the City of Humacao, on the twenty-ninth day of August, eighteen hundred and ninety-one, and in open court, it being nine o'clock in the morning, before the Judge of First Instance for the said city, and for the Judicial District thereof, Don Jose Merino Lopez, the public sale was begun as heretofore ordered, at which there were present Don Jose Avalo Sanchez, as the party defendant, accompanied by his solicitor Don Tomas Carrera, and lawyer Don Feliciano Piñol y Massoa, and solicitor Don Jose Calixto Bapandas, representing the plaintiff; a list of the property
379 which is to be sold was read, and it appeared therefrom that said property is the following: A sugar cane plantation named "Bello Sitio" situated in the barrio of Quebrada Fajardo, in the municipal district of the latter name, with an area of four hundred cuerdas of land, more or less, equivalent to one hundred and fifty-seven hectares, twenty-one ares and fifty-nine centares; it is bounded on the north by the plantation of Doña Isabel Siaca and by lands of the plantation Convento of Doña Pilar Becerril y Torres; on the east by property of Nicolas Telemaco and lands of Don Benigno de Santiago and of Sebastiana of the same sur-name; on the south by the property Ausubal of the Sucesion of Doña Alejandrina Becerril y Torres, by lands of Don Jose Concepcion Lopez, by lands of the Sucesion of Alberto Weston, and by the road from Fajardo to Luquillo; on the west by lands of Don Enrique Garcia, lands of Nicolas Perez and of Gervasio Rivera; machinery without piping, with all the masonry foundations removed, consisting of the movement of the cylinder engine, fly-wheel, catherine wheel, one gear, and the necessary shafting, an old boiler in very bad condition, without whistle or gauge; a mill of three crushers with crowns, carriage and plates; one furnace with masonry work destroyed and with one caldron broken; two wooden vats for cooling sugar, one wooden box for sediment; one wooden box for water; two wooden canals; four wooden boxes for molasses; one old bagasse shed with galvanized iron roofing that measures forty-five meters in front by one in width, which shed is full of bagasse except in the extreme north where a little is missing, and is situated next to the lands with a rail track through the center; another shed roofed with shingles; another
380 shed roofed with shingles that measures forty-four meters in front by five and a half meters in width; one building for the caldrons, roofed with galvanized iron and with the sides of native lumber, in bad condition, and a gate, which is missing, and which leads to the furnace doors; the said building measures twenty-eight meters in front by twelve meters in depth; a circular shed which has been used for a mill, without fence, galvanized iron roofing, measuring fifteen meters in diameter, and with the said roofing oxidized and perforated; a masonry smoke-stack, cracked from the top down, with five supports, or wooden squares, to prevent tumbling; a

dwelling house built of frame work, with galvanized iron roofing and with the piazza in front, the said house measuring sixteen meters in depth and nine in front, and a kitchen separate from it, built of the same material and roofing, and measuring four meters in length by three meters in front; a small bath house and letrine built of the same material as the house and measuring three meters in front by four meters in depth; a carriage house built of the same material and roofing with three meters in front by four meters in depth; a house for the overseer with galvanized iron roofing and with wooden sides, in very bad condition, measuring seven meters in front by nine and a half meters in depth; four houses for peons built of native lumber, thatched roof, each measuring four meters in front by five meters in depth; twenty-five rafters of various dimensions in bad condition, which said property is offered at public sale for the amount of sixteen thousand four hundred and nine pesos, with the condition that no bids will be received that do not cover two-thirds of the said amount in which the said property has been appraised. This statement of the property and of the conditions was announced to the pub-
381 lic by the auctioneer, and an offer was made by the party plaintiff asking for the adjudication of the property to him for two-thirds of its appraised value, or, namely, for ten thousand nine hundred and thirty-nine pesos and thirty-four centavos, which he covers with six thousand pesos of the mortgage of Don Leonardo Planas, which mortgage the widow Veve acknowledges on the said property, and with the amount of five thousand six hundred pesos of the mortgage of this lady, as well as with the interest on this mortgage which shall be liquidated in accordance with the final judgment of the Most Excellent the Royal Audiencia Court, and with the costs paid by him at his own instance; this in case that the said mortgages should not cover the amount of ten thousand nine hundred and thirty-nine pesos and thirty-four centavos, which make two-thirds of the appraisement, which is not the case; which said offer was made by the representative of the widow Veve, Don Juan Vaamonde Lopez, who is also present in this act, which was not stated, by omission, at the beginning hereof. At this stage, His Honor ordered the auctioneer to announce the preceding offer, which was done for three times, in case that anyone should desire to better it, which was not done, and therefore His Honor directed the announcement to be made by the auctioneer of the name of the best bidder, stating that it was the only bid, and also the amount of the bid, which was done by saying that the best bidder was the widow of Veve only, offering the price of ten thousand nine hundred and thirty-nine pesos and thirty-four centavos, and thereupon His Honor reserved the right to approve the sale until after the proceedings of the sale that had been held in the municipal court of Fajardo had been received, and thereby the act was terminated and signed
382 by the parties present, by the auctioneer and one witness, after His Honor, to which I certify.—Jose Merino.—J. Vaamonde Lopez.—Jose C. Bajandas.—At the request of the auctioneer Juan de la Cruz, Martin Reina.—Before me, Jose Gabl. Gonzalez."

That the said sale was approved by writ dated the thirty-first day of August, the provisions of which are as follows:

"Don Jose Merino Lopez, Judge of First Instance for this City and for the district thereof, before me, the Scrivener, stated: The proceedings of the public sale held in the Municipal Court of Fajardo, and in this Court of First Instance, are hereby approved, and in consequence of the latter there is adjudicated to Doña Maria Diaz y Siaca, widow of Veve, in payment of the principal and costs, the attached property in these proceedings of Don Jose Avalo Sanchez, for the amount of ten thousand nine hundred and thirty-nine pesos and thirty-four centavos, which is two-thirds of the price that results liquidated, and inasmuch as the said lady accepts the obligations over-reaching the amount that constitute the two-thirds part of the appraised value of the attached property, there is reserved to her her rights for such purpose. Let the Scrivener make the proper liquidation, and this done, let the debtor be notified of this writ, so that he shall execute within a term of three days the proper instrument of title in favor of the creditor, and failing to do so, the same shall be executed officially; and let this adjudication be understood with the reservation provided by Article 1517 of the said law."

That on the first day of September, the party defendant raised an incident asking for the suspension of all proceedings and to declare void all action taken after the 27th day of August
383 ultimo. And a telegram having been received from the Juzgado Instruccion (Court of Instruction) of the Capital, claiming the original record, under date of the third of September, the transmittal thereof was ordered and the same was returned with a communication dated the twenty-second of the same month, and under date of the twenty-third the suspension of the said proceedings was deemed to have been raised, and the parties were ordered to be notified; on the same date the incident raised by the representative of Don Jose Avalo Sanchez as to the nullity of the proceedings, was dismissed.

That under date of the twenty-fifth the liquidation of charges, which was ordered made in the writ approving the public sale, had been made, and that it appears from the said liquidation that the debtor Don Jose Avalo Sanchez remains indebted on account of the credits claimed in this proceeding, in the amount of two thousand seven hundred and thirteen pesos and eleven centavos.

That on the twenty-eighth day of September the party defendant took an appeal from the last order, which was denied under date of October seventh, and an appeal therefrom was taken and admitted as to one effect only under date of the fourteenth.

That on the third day of October the party plaintiff asked for the official execution of the proper instrument of title, inasmuch as the debtor had failed to do so, and the latter named having asked for a correction of the liquidation of charges, and for a deposit in the Registry of the Court of previous credits, a writ was issued under date of the twenty-first, the provisions of which read as follows:

384 "Don Romulo Villahermosa y Borao, Judge of First Instance of this City and the District thereof, before me, stated: That irrespective of the liquidation made as a useless proceeding in the present case, he should order, and did order, that Doña Maria Diaz, widow of Veve, be put into immediate possession of the property named "Bello Sitio," as the said property had been adjudicated to her in payment of her credit, and costs, and that for the purpose that an order issue to the Municipal Judge of Fajardo, where said property is situated, and to proceed to the execution of the proper instrument of title, for which purpose the record hereof should be delivered to the Notary of this city; in virtue whereof, and under date of the thirtieth of October, the said creditor was given possession as aforesaid, by the Municipal Judge of Fajardo, in accordance with the proceedings set forth at Folio 440 of the record.

Of all of the above as well as the attachment levied on the 21st day of February, of the year — eighty-nine, the final annotation was suspended as the then Registrar could not do so as he was a relative by affinity of the party plaintiff, and instead, an entry of suspension was made for such a term as may be necessary, for a decision on the consultation made to the Superior Authority on the subject, as set forth at Folio 232 of Volume 31 of the Registry of Property for this District, 5th of the municipality of Fajardo, property number 9, duplicate, entry letter "B". It so appears from the original records which have been presented to me, and to which I refer, and certify to have before me, and which I sign and deliver in this act to Señor Vaamonde.

Second. That in virtue of the foregoing, and in compliance
385 with the provisions of the writ of the twenty-seventh day of October ultimo, the parties hereto execute this instrument under the following clauses:

First. Don Romulo Villahermosa Borao, as such Judge of First Instance for this City and the District thereof, declares adjudicated in favor of Doña Maria Diaz y Siaca, widow of Veve, of the town of Fajardo, represented herein by her attorney in fact, Sr. Vaamonde, the rural property or sugar cane plantation named "Bello Sitio" with everything appertaining thereto and the accessories thereof, and which was the object of the public sale held in this city on the 29th day of August, ultimo, belonging to the debtor, Don Jose Avalo Sanchez, and in the name and in representation of the latter, who failed to execute the present instrument, sells and transfers in favor of the said Doña Maria Diaz, the aforesaid plantation "Bello Sitio" with all the appurtenances thereof, uses, rights and servitudes, and with the liens that shall be stated in Clause Second thereof, for the price for which the public sale was made, amounting to ten thousand nine hundred and thirty-nine pesos and thiry-four centavos, current money, which is deemed to have been paid or covered in the manner following: Six thousand pesos which the creditor and bidder retains in her possession as value of the mortgage, which she acknowledges on the said property in favor of Don Leonardo Planas, four thousand nine hundred and thirty-nine pesos and thirty-four centavos, which likewise the said lady retains in her pos-

session in payment of an equal amount of a mortgage credit for which the execution referred to has been prosecuted, which the said two latter sums make an equal amount as the price of the
386 sale, and for which, as stated above, she considers herself fully paid, and the Judge issues therefor a full and complete release in favor of the creditor and bidder, Doña Maria Diaz, widow of Siaca, who, through her attorney in fact, Sr. Vaamonde, and in virtue of this instrument, reserves her rights and actions against the debtor, Don José Avalo Sanchez, for that part remaining unpaid of her aforesaid mortgage credit.

Second. The party hereto, Sr. Vaamonde, as such attorney in fact for Doña Maria Diaz, and in the name of the latter, acknowledges all the liens which on the said plantation "Bello Sitio" appear recorded prior to the credit for which the same has been executed, and which are such as appear from the certificate of liens set forth at folio 316 over, and following, of the record, namely, the mortgage credit of Señor Planas, and the bonds at the disposal of the President of the Most Excellant the Territorial Court to secure the office of Registrar of Property for Messrs. Beyens and Belaval; with which said three liens he accepts the said property.

Third. The debtor, Don Jose Avalo Sanchez, remains bound under the present sale to guarantee the title in accordance with law; Doña Maria, who acquires the property, is in possession of the said property "Bello Sitio" since the 30th of October, ultimo, and shall be considered as the exclusive owner thereof by virtue of this instrument, and this city is designated as the place for all acts, notifications and proceedings, whether judicial or extra-judicial, that may arise under this instrument and for the enforcement thereof.

I, the Notary, set forth herein the following:

387 First. That the payment of the price having been declared, as it has been declared, the property sold remains free from liability in consideration of the same, even though it shall hereafter be shown that the payment of the said price, either in whole or in part, is not true, and that there is hereby reserved in favor of the State, the Province and the Municipality their legal preferred mortgage.

Second. That the first copy of this instrument must be filed within the term of thirty days in the office for the liquidation of royal dues and in the Registry of Property for the district, for the payment of such fees as shall accrue to the Treasury, and for the registration thereof, without which it shall incur in the fines provided by law, and will not be admitted in the courts, tribunals and offices of the government, unless in excepted cases, and cannot oppose or prejudice a third party, except after the date of the registration of same.

Under which said clauses and conditions the parties hereto execute this instrument, which is accepted by Señor Vaamonde in all its parts, binding himself fully to comply therewith; the witnesses to this instrument being Don Jose C. Bajandas.—Don Daniel Marcano Alonso and Don Adolfo Carnicer of this vicinity, who state that they are not legally disqualified to act as such.

This instrument having been read in full by me, the notary, on petition of the parties hereto, who did not make use of their right to read the same each one for himself, and of which I informed them, the parties hereto ratify the contents hereof and sign with the witnesses. To all of which, as well as to the identity, profession and residence of the parties hereto, I certify (with the ex-
388 pressed approval of the parties hereto). Romulo Villahermosa.—Viuda de Veve pp. J. Vaamonde Lopez.—Jose J. Bajandas.—Daniel M. Alonso.—Adolfo Carnicer. Signed, Marcelino Estevanez.

I, Don Antonio de Aldrey y Montolio, resident and notary of the City of Humacao, seat of the notarial district, and of the Territorial College of the Island of Porto Rico, do hereby certify: That the preceding copy is true and correct from the original of its contents, filed in the archives of this office of notary under my charge. In testimony whereof, and on petition of Jose Avalo Sanchez, I issue this copy under my hand and signature in eleven sheets of paper of my own use, affixing thereon an internal revenue stamp of the value of fifty cents as provided by the Hollander Bill, and making entry of the issuance of this copy in Humacao this twenty-eighth day of April, nineteen hundred and three.

ANTONIO DE ALDREY, *Notary.*

Internal revenue stamp of the value of fifty cents affixed and cancelled.

A true and correct translation.

_____,
Interpreter and Translator.

389 EXHIBIT M FOR THE PLAINTIFF.

Translation.

I, Don Marcelino Aybar, Scrivener for the Court of First Instance for this capital,

Do hereby certify: That in the involuntary insolvency proceedings of Don Jose Avalo Sanchez, instituted by Don Vicente Balbás, represented by solicitor Don Jose H. Boneta, there is an entry, which being literally copied reads as follows:

"Attachment proceedings: On this 12th day of October, 1891, the bailiff of the Court, with me the Secretary, went to the plantation "Bello Sitio" to levy the attachment heretofore ordered of the properties of Don José Avalo Sanchez, and thereupon in the presence of the appointed Receiver (depositario) Don Jose Gonzalez, we proceeded to levy the attachment on the following properties: A plantation named "Bello Sitio" composed of four hundred cuerdas of land, more or less, bounded on the north by the plantation "Convento" and by other lands of Doña Isabel Siaca and by other lands of the said Don Jose Avalo Sanchez; on the south by lands of Messrs.

Boras Hermanos and by the Sucesion Westen, the said Sanchez and Don José Lopez; on the east by Sebastiana de Santiago, Sucesion of Nicolas Telemaco and by other lands of Don Hilarion Yoris, and on the west by lands of Nieves Perez, Don Antonio Pacheco, Doña Dolores Oritz and Don Jose Lopez, there being thereon several cane plantations. One house, twenty-eight meters in length by fourteen in width, built of frame work and galvanized iron roofing, part of masonry, containing in the interior thereof an engine and cane crusher, boiler, caldron, two vats, a water tank; another tank built of native lumber for sediments, one house for ox-power mill,
390 without the mill, roofed with galvanized iron and measuring sixteen meters in diameter; another house, annexed to the first, measuring twelve meters in length by fourteen meters in width, without a roof, with four tanks for molasses; one shed full of bagasse, measuring forty meters in length by nine meters in width with galvanized iron roofing; one frame dwelling house, with galvanized iron roofing, measuring nine meters in length and seven meters in width; another parcel, composed of — land, situated in the center of the same, bounded on the north by the plantation Convento, on the south by the plantation "Bello Sitio" and the Sucesion Westen, and by the brook of Fajardo; on the east by the old road leading to the town, and on the west by the Sucesion of Pascual Perez and Don Franci-co Trinidad, containing a frame dwelling house, galvanized iron roofing, that measures fifteen meters in length and nine meters in width, with the piazza appertaining thereto. One kitchen built of frame work, galvanized iron roofing, five meters in length by four meters in width. One bath-house and letrine built of framework and galvanized iron roofing, five meters in length by four meters in width; another carriage house five meters in length by four meters in width, built of framework with galvanized iron roofing. Four small houses, each five meters in length by four meters in width, straw thatched and built of native lumber. One shed four meters in length by five meters in width, roofed with wooden shingles and without sides. One iron wheel for mixing clay. Another parcel of land composed of three cuerdas bounded on the north by the plantation "Bello Sitio", on the south by the Sucesion Westen, on the east by the said plantation, on the west by Don José Lopez. At this moment, and there being
391 no other properties to attach, Señor Sanchez, who is here present, sets forth that the three parcels herein last enumerated, with the buildings thereon, have been attached by the widow of Veve, under the executory action which said lady is prosecuting against him, though they are not mortgaged, and that the documents of ownership which he has in his possession will be delivered by him to the judge issuing the letters rogatory in the capital of this island. At this moment the baliff of the court, in my presence proceeded to depo-it the said properties with the said Don Jose Gonzales under the formalities provided by law, as well as to the appointment as administrator of the property attached, and he accepted the said appointment under the penalties and respon-ibilities for such cases made and provided.

The said receiver (depositario) and administrator, appointed as aforesaid, set forth immediately that all the pasture of the plantation had been destroyed by animals as well as the cane plantations of longer growth. Recent cutting is noticed, which he sets forth herein in use of his right. By which this proceeding was terminated, which is signed by the bailiff, the depositario and administrator, and by Don José Avalo Sanchez, before me, the Secretary, to which I certify. Epifanio Rivera.—Jose Gonzales.—Jose Avalo Sanchez.—J. R. Ortiz Alvarez. It is a true copy from the original of its contents in the aforesaid insolvency proceedings, and for the purpose of forming a separate record as to the deposit and administration of the properties, I issue the present, in compliance with orders, this 7th day of December, 1891.—Maximino Aybar."

I, Jose E. Figueras, Secretary of the District Court for the Judicial District of San Juan, P. R.,

Do hereby certify: That the first piece of the involuntary
392 insolvency proceedings which is indicated in the indices of this archive, has not been found, and I further certify that the foregoing is a true and correct copy from another certified copy which is found in the first piece of the said insolvency proceedings filed in this office at folios 1 and 2. In testimony whereof I affix hereunto my signature and the seal of the court this 12th day of November, 1908.

____ ____,
Secretary of the Court.

A true and correct translation.

P. DE CASTRO,
Interpreter and Translator.

393 EXHIBIT B FOR DEFENDANTS.

Don Jose Castro Lassere.

I do hereby certify, that in pursuance to the request of the "Succession Veve" I proceeded to make a survey of the property known as "Bello Sitio" belonging to them, situated in the barrio of "Quebrada Fajardo" in the municipal district of Fajardo, on the 7th of April of the present year, after having summoned the adjoining property owners as follows:

Boundaries.

On the North. By the plantation Convento and the plantation Dos Hermanos.

On the South. By Nieves Perez, Hilario Soto, Pascasio Parrilla, Laureano Sanchez, Manuel Baralt, and the Fajardo-Luquillo road.

On the East. By the plantation Dos Hermanos.

On the West. By the Succession of Concha Garcia and Gervasio Rivera, the exact description by metes and bounds being as follows:

First Parcel.

Beginning at point No. 1 on the map represented by a post of "cohovana" placed at the edge of the Fajardo-Luquillo road, Thence, along the boundary lines with lands of the plantation Dos Hermanos, with 51 degrees, 20′ and 51 meters to point number 2 represented by a jobo tree.

346 degrees, 15 minutes and 450 meters to point No. 3, which is a jobo tree.

11 degrees 10′ and 694 meters to point No. 4, which is represented by a post.

394 274 degrees 25′ and 264 meters to point No. 5, which is represented by a post.

281 degrees 40′ and 11 meters to point No. 6, which is represented by a post.

289 degrees 30′ and 306 meters to point No. 7, which is a trunk of a cayur tree, being the last point of the boundary with the lands of the plantation Dos Hermanos and the first with regard to those of the plantation "Convento". Thence along the boundary line of the lands of plantation Convento with,

168 degrees, 30′ and 58 meters to point No. 8, which is an iron post.

263° 40′ and 472 meters to point No. 9, which is a moca tree.

263 degrees 40′ and 30 meters to point 9 which is a post.

42 degrees 15′ and 40 meters to point No. 10 which is a jobo tree.

276 degrees and 470 meters to point 11, which is a jobo tree.

276 degrees and 488 meters to point number 12, which is an almacigo tree.

276 degrees 43 minutes and 470 meters to point number 13, which is an ausubo post which is the last point on the boundary line with the plantation Convento. Thence along the boundary line of the lands of the Succession of Concha Garcia, with

215 degrees, 20′ and 112 meters to point number 14 which is a jobo post. Thence bounding with the Fajardo-Luquillo road, with 99 degrees, 30′ and 160 meters to point number 15, which is a jobo post.

109 degrees and 120 meters to point No. 16, which is a post.

395 101° 45′ and 144 meters to point No. 17, which is a jobo post.

107° 15′ and 132 meters to point No. 18, which is a post.

103° 40′ and 394 meters to point No. 19.

101° 22′ and 188 meters to point No. 20 which is a post.

100 degrees 45′ and 195 meters to point No. 21, which is a post.

115 degrees 50′ and 138 meters to point No. 22, which is a post.

128 degrees and 60 meters to point No. 23 which is a post.

112 degrees 20′ and 10 meters to point 24 which is a jobo post where the boundary line with the road ends. Thence along the line bounding with the lands of Laureano Sanchez, with

32 degrees 45′ and 152 meters to point No. 25, which is a small "mamey" tree.

126 degrees 3′ and 220 meters to point No. 26, which is a jobo post.

214 degrees 25′ and 64 meters to point No. 27, which is an almacigo post.

117 degrees and 245 meters to point No. 28, which is a jobo tree.

Thence along the boundary line with the lands of Don Manuel Baralt, with

151 degrees 20′ and 487 meters to point No. 29, which is a cohovana post, last point of the boundary line with the lands of Mr. Baralt. Thence along the boundary line of the Fajardo-Loquillo road, with

122 degrees 33′ and 350 meters to point No. 1 or the starting point.

Which perimeter contains an area of 98 hectares, 13 ares, 90 centiares, and 15 square decimeters, equivalent to 249 cuerdas, 72 hundredths of a cuerda, of the old and usual measure in the
396 country.

Second Parcel.

The exact description of its metes and bounds is as follows:

Beginning at point No. 1 on the map represented by a post and an iron roller contiguous to the Fajardo-Luquillo road.

Thence following the boundary line with said road, with

107 degrees 15′ and 132 meters to point No. 2,

103 degrees 40′ and 394 meters to point No. 3,

101 degrees 22′ and 188 meters to point No. 4,

100 degrees 45′ and 195 meters to point No. 5,

115 degrees 50′ and 138 meters to point No. 6,

128 degrees and 60 meters to point No. 7,

112 degrees 20′ and 33 meters to point No. 8, which is a jobo post where the boundary line with the road ends.

Thence along the boundary line of the lands of Pascasio Parilla with 207 degrees 45′ and 397 meters to point No. 9, which is an algarrobo stump,

215 degrees 8′ and 17 meters to point No. 10, a jobo stump situated on the right bank of the Quebrada Fajardo. Thence following said ravine up stream in all its sinuosities right and left to point No. 95 which is a muñeco tree marked with a cross where the boundary line of the ravine ends. Thence bounding with lands of Hilario Soto with

320 degrees 25′ and 372 meters to point number 96, which is a jobo tree. Thence bounding with lands of Nieves Perez, with

299 degrees 22′ and 356 meters to point No. 97. Thence
397 bounding with lands of Gervasio Rivera, with

10 degrees 27′ and 446 meters to point No. 1 or starting point.

Which perimeter contains an area of 65 hectares, 2 ares, 96 centiares and 15 square decimeters, equivalent to 165 cuerdas and 47 hundredths of a cuerda in the old usual measurement of the country.

I hereby certify that the above described metes and bounds have

been obtained by sexagesimal graduation the increment of which from zero on the North goes towards the East, South, and West.

Fajardo, P. R., April 26, 1909.

JOSÉ CASTRO LASSRE, *Surveyor.*

I approve the boundary line.
By GERVASIO RIVERA.
MARIA RIVERA.

I approve the boundary line.
By LUISA GARCIA, *Succession of Concha Garcia.*
FRANCO. GARCIA.

I approve the boundary line.
By NIEVES PEREZ
PRAXEDES PEREZ.

I approve the boundary line.
PASCASIO PARRILLA.

I approve the boundary line.
By MANUEL BARALT.
M. F. BARALT.

I approve the boundary line.
LAUREANO SANCHEZ.

I approve the boundary line.
HILARIO SOTO.
PRAXEDES PEREZ.

I approve the boundary line.
I. SIACA, *Widow of Rivera.*

I approve the boundary line.
By THE WIDOW OF CERRA.
DGO. CERRA.

The above is a correct translation.

F. FANO,
Interpreter & Translator U. S. Court.

398 EXHIBIT C FOR THE DEFENDANTS.

(Translation.)

To the Registrar of Property, Humacao, P. R.:

Tomas Carrera, verbal mandatory of attorney Don José de Guzman Benitez, appears and sets forth:

That I need a literal certified copy, first, of the entry of presentation number 570, existing at folio 210, volume 10 of the Journal, of a deed executed in Fajardo on July 12, 1858, to which there was attached a petition signed by Don José Avalo Sanchez, dated Sep-

tember 5th, 1902, wherein said gentleman as interested party supplied some additional data for the registration of said deed. (Said petition was placed on the files of private documents under No. 39, corresponding to said year.)

And second, that below the entry of presentation, copy of the petition be inserted.

I hereby request that you cause said certified copy to be issued and delivered to me.

Humacao, P. R., January 26, 1909.

TOMAS CARRERA.

I, Miguel Planellas Yañez, Registrar of Property of the city of Humacao, (Puerto Rico) and its District.

Certify:

That at folio 210 of volume 10 of the Journal of entries at this office of the Registry of Property, there is an entry of presentation number 570, which literally reads as follows:

570. Don José Avalo Sanchez, a resident of Rio Grande, by verbal mandate of Don Monserrate Garcia, presents at two o'clock today a copy of the deed executed in Fajardo on July 12, 1858, 399 before the notary Don Antonio Gotay, I mean to say, Don Eugenio de Torres, whereby Don Antonio Gotay does make sale unto Don Monserrate Garcia and Don Andres Avelino Sauri, of a rural property composed of two hundred and forty-nine and a half cuerdas of land, in the barrio of Quebrada Fajardo, in the municipality of Fajardo, for the sum of four thousand pesos macuquinos. This presentation is made for the purpose of inscribing only one half of the property belonging to Don Avelino Sauri. Humacao, September 5th, 1902. Francisco Porrata, Substitute—Fees No. 1 of the Tariff 75, cents—José Avalo Sanchez.

I also certify:

That in the files of documents corresponding to the year 1902, there is one under number 39, which literally reads as follows:

To the Registrar of Property: Don José Avalo Sanchez, of legal age, married, property owner and resident of Rio Grande, appears and sets forth: That he has presented at that office a deed of sale executed by Don Antonio Gotay in favor of Don Monserrate Garcia and Don Andres Avelino Sauri, under date of July 12, 1858, and before the scriveneer Don Lorenzo Catala, and that there being lacking in said deed certain requisites required by article 9 of the mortgage law, they are herein supplemented in the following manner: The property is situated in the barrio Quebrada Fajardo, municipal district of Fajardo, and its actual boundaries are as follows: On the north by the plantation "Convento", lands of Don José Avalo Sanchez, and Doña Isabel Siaca; on the South by Don Tomas Garcia, Jacinto Perez and Nieves Perez; on the East by Don Manuel Camuñas, Rivera Brothers and the "caño" or channel of the Inea; on the West by Doña Concepcion Garcia and Don Gervasio Rivera and the same Mr. Avalo Sanchez. It is composed of 249 cuerdas and a half, equivalent to 98 hectares, 6 ares and 4 centiares. The personal qualifications of the purchasers are as follows: Don Monser-

rate Garcia, farmer, married, of legal age, and residing formerly in Fajardo, and Don Andres Avelino Sauri, of legal age, married, property owner and resident of Yabucoa. And in order that said registration may be carried into effect I hereby make proper application therefor.—Humacao, September 5th, 1902—Between lines—Caño de la Inea—José Avalo Sanchez.

Said document contains also the following note: See inscription made at folio 61 of volume 12 of Fajardo; Humacao, September 10, 1902—Porrata, Substitute.

In testimony whereof I issue the present at the request of Don Tomas Carrera, as verbal mandatary of Don Jose de Guzman
400 Benitez, in Humacao, Puerto Rico, on January 28th, 1909.—Between lines—six acres.

MIGUEL PLANELLAS,
Registrar of Property.

There have been affixed internal revenue stamps to the value of $2.30, as per No. 6 of the tariff.

MIGUEL PLANELLAS.

The above is a correct translation.
(Sgd.) F. FANO,
Interpreter & Translator U. S. Court.

401 EXHIBIT D FOR THE DEFENDANTS.

(Translation.)

On the 7th day of April, 1909, in the plantation "Bello Sitio," place of Quebrada Fajardo, municipal district of Fajardo, at seven o'clock a. m., there were present, Messrs. José Castro Lassare, Arturo Zalduondo Veve, Don José Vaamonde Veve, Don Guillermo Oppenheimer and Don Manuel Baralt y Camuñas; the first named party as expert surveyor, Messrs. Veve and Zalduondo, as representatives of Doña Clotilde Veve, widow of Vaamonde, and Doña Josefina Veve de Vizcarrondo, respectively, and Mr. Oppenheimer by his own right and as representative of the estate of Doña Celina Veve de Porrata, and Mr. Beralt as an adjoining land owner of the plantation Bello Sitio, which parties had been previously cited in the proceedings instituted by Don José Avalo Sanchez against the heirs of Doña Maria Diaz widow of Veve, by the plaintiff, as shown by the returns of the marshal, as well as all the property owners adjoining the said plantation "Bello Sitio," no party having appeared on behalf of the plaintiff José Avalo Sanchez, whereupon the said surveyor Mr. Castro proceeded to make a survey and fix the metes and bounds of the property Bello Sitio aforesaid, in which act he was accompanied by the above mentioned gentlemen. Said survey and the fixing of metes and bounds was carried out in accordance with the terms of the certificate of survey issued on this day by the same expert surveyor Mr. Castro, there having gone over the ground

to witness said work the respective owners of the lands adjoining Bello Sitio, to wit, for the plantation Convento, Don Domingo Cerra; for the plantation Dos Hermanos, Don Evaristo Veve; for Don Laureano Sanchez, Don Emilio Moreira; for Don Manuel Ba-
402 ralt, Don Manuel Baralt Camuñas; for the heirs of Doña Concha Garcia, Don Francisco Figueroa; for Don Gervasio Rivera, he himself; for Nieves Perez, Praxedes Perez; for Hilario Soto, he himself; for Pascasio Parrilla, he himself. All of which adjoining land owners said they were satisfied with the survey made by the expert surveyor of the boundary lines within which lie the area of land composing the property known as "Bello Sitio" belonging to the heirs of Doña Maria Diaz widow of Veve, just as it appears from the certificate of survey to which reference has been made, which is also signed by the same adjoining land owners.

In testimony whereof, and for proper action I sign this document after having read the same to each of the subscribing parties, separately.—Fajardo, April 26, 1909.—Between lines—En el dia de hoy—on this day—

JOSÉ CASTRO LASSARE, *Surveyor.*
GUILLERMO OPPENHEIMER.
JOSÉ VAAMONDE VEVE.
ARTURO ZALDUONDO VEVE.
MANUEL BARALT CAMUÑAS.
DGO. CERRA.
EMILIO MOREIRA.
EVARISTO VEVE.
POR GERVASIO RIVERA.
MARIA RIVERA.
PASCASIO PARILLA.
PRAXEDES PEREZ.
POR FRANCISCO FIGUEROA.
CRISTINO CALDERON.
POR HILARIO SOTO.
PRAXEDES PEREZ.

The above is a correct translation.

F. FANO,
Interpreter and Translator U. S. Court.

403 E FOR THE DEFENDANTS, NOT ADMITTED.

To the Registrar of Property of Humacao.

SIR: In the name of my wife Doña Concepcion Veve de Belaval, I hereby request that you forward me a literal certified copy of the description of the plantation "Bello Sitio" as per the first inscription thereof, the same being property number nine of the Municipality of Fajardo, and also a literal transcript of the changes made in said description with reference to the first inscription in all subsequent inscriptions up to number seven inclusive, which appears at folio 237 over, volume five of Fajardo as the seventh inscription

of the said property number nine duplicate. I am sending you herewith revenue stamps to the value of $2.30 and if it should cost more please let me know.

Respectfully,

JOSÉ S. BELAVAL.

I, Miguel Planellas Yañez, Registrar of Property of the city of Humacao and its District.

Do hereby certify: That at folio 43 of volume 1 of Fajardo, there appears the first inscription of property number 9, wherein the said property is described as follows:

Rural.—Sugar cane plantation called "Bello Sitio" situated in the barrio of Quebrada Fajardo, in the municipality of Fajardo, bounded on the East by Nicolas Telemaco, Don Benigno y Sebastiana de Santiago; on the North Doña Isabel Siaca and the plantation Convento, on the West by Enrique Garcia Nieves Perez and Alberto Despian, and on the South by Don José Antonio
404 Becerril, José Lopez, Successors of Alberto Western and the road leading to Luquillo, which said plantation contains four hundred cuerdas of land with the following buildings thereon: Furnace house with galvanized iron roof, with four vats and smoke stack, warehouse also with galvanized iron roof, distillery with galvanized iron roof; mill house covered with galvanized iron, 20 yards long, an iron mill for cane, stable shed with galvanized iron roof, bagasse shed covered with galvanized iron, masonry well and watering trough for the oxen, dwelling house and kitchen with galvanized iron roof, shop house, house for the manager and another house covered with thatch.

Subsequently in the 4th inscription of said property said buildings were also enumerated and appraised as follows:

One building 35 meters 10 centimeters long by 15 meters 3 centimeters wide, one fourth of which is built of masonry on the side where the vats and boilers are located, and the balance of wood, with galvanized iron roof, containing in it the mill, furnace house with 4 vats and tanks, house with beams for sugar pans and four wooden tanks, appraised at four thousand dollars, I mean to say, pesos, a dismounted machinery belonging to the plantation appraised at one thousand pesos, one boiler six meters 12 centimeters long by one meter thirty-nine centimeters diameter, single tubed, set up, appraised at five hundred pesos, one bagasse shed 44 meters 29 centimeters long by nine meters 18 centimeters wide, with galvanized iron roof, scorched by fire and painted with black varnish, all constructed of round timber, appraised at six hundred pesos, rail line with truck for hauling bagasse, appraised at one hundred pesos, one circular shed for the sugar mill moved by oxen,
405 15 meters 3 centimeters diameter, with galvanized iron roof, appraised at five hundred pesos, one iron tank for the syrup and another of ausubo wood appraised at two hundred pesos; one cooper shed, carpenter shop and brick plant with its accessories and iron wheels to grind clay, with shingle roof, appraised at eight hundred pesos, one house for the mayordomo or overseer 8 meters 35

centimeters long by 7 meters fifty centimeters wide with wooden walls and galvanized iron roof, appraised at six hundred pesos; one house 10 meters two centimeters long by five meters five centimeters wide with wooden walls and galvanized iron roof appraised at four hundred pesos, forge house 4 meters 17 centimeters long by two meters fifty -- wide with wooden walls and galvanized iron roof appraised at one hundred pesos. One dwelling house ten meters two centimeters long by five meters one centimeter wide, and an annex of eight meters 35 centimeters on one side and four meters 17 centimeters on the other, covered with galvanized iron with wooden walls, appraised at fifteen hundred pesos, one house 4 meters 17 centimeters long by 3.34 meters wide and another house of the same dimensions the first of which is used as a kitchen and as a bath house the latter, with a masonry bath, both with wooden walls and galvanized iron roof appraised at three hundred pesos; one shed 3.34 meters long by 2.55 meters wide covered with galvanized iron, appraised at sixty pesos and five houses for the peons with wooden walls and roof covered with thatch, appraised at three hundred pesos, the same having thatch roofs.

And finally in the seventh inscription of said property it is set out that the property is bounded on the West by Nicolas Perez and not by Nieves Perez and that the four hundred cuerdas which
406 said property contains are equivalent to 157 hectares, 21 ares, 21 centiares.

I also certify: That the said property appears actually inscribed in the name of Doña Maria Diaz y Siaca, who acquired it by purchase at public sale in the executory proceedings which the said lady Diaz Siaca brought against Don José Avalo Sanchez, to collect five thousand six hundred pesos, before the Judge of the First Instance of the District of Humacao, as appears from the 7th inscription aforesaid at folio 237 over, volume 5 of Fajardo.

This is all that appears in the Registry of Property as requested.

And at the request of Don José S. Belaval, in the name of his wife Doña Concepcion Veve de Belaval, I issue the present in Humacao on November the 9th, 1908.

MIGUEL PLANELLAS,
Registrar.

There have been affixed and cancelled for fees according to No. 6 of the tariff, two internal revenue stamps to the value of one dollar each and one of fifty cents.

MIGUEL PLANELLAS.

407 EXHIBIT F FOR THE DEFENDANTS.

Decree.

Puerto Rico, April 27, 1896—The petition made is hereby granted and a second order shall be issued to the Court of Humacao, asking the escribano to examine his records and give the names and boundaries of the property belonging to the bankrupt.—Ordered and signed—Juan O. Padilla. Before me—Maximino Aybar.

Letter Rogatory.

Don Juan O. Padilla, substitute municipal judge and acting judge of first instance of the San Francisco Court of this city:

To the judge of the same class of Humacao, greetings. I beg to advise you that in the matter of the receivership in connection with the bankruptcy proceedings instituted by the creditors of José Avalo Sanchez, solicitor Velez has filed the following petition.—That in the letter rogatory sent lately by this court to the court of Humacao, requesting the delivery of the bankrupt estate to the new trustee Don Gabriel Arruza, it was omitted to state the name of the barrio and the boundaries of the plantation "Bello Sitio", and inasmuch as this defect purely material and involuntary should be correct to enable the Judge of Humacao to comply with the order relative to the change of trustee, I hereby request the Court that proper steps be taken at once to correct the omission and that the judge who issued the letter rogatory be notified by wire that the properties in question have name, barrio and boundaries, which are known, and will be described by the trustee Don Gabriel
408 Arruza, so that the orders issued may be complied with without detriment to the prompt administration of justice. The plantation Bello Sitio is bounded as follows: On the north by the plantation Convento and Doña Isabel Siaca, on the south by the heirs of Borras Brothers, heirs of Wuesten, and José Lopez, on the east by Sebastian de Santiago and Hilario Llovis, and on the west by Nieves Perez and the farm Aldea, being composed of about 400 cuerdas of land more or less. Another farm of 3 cuerdas, bounded on the north by the plantation Bello Sitio, on the south by lands of the heirs of Wuesten, on the east by the channel "Enea" and on the west by lands of José Lopez. Another tract of land of 6 cuerdas with a house thereon, shed for the manufacture of earthenware, an iron wheel to grind clay, five shacks for the laborers, kitchen, latrine and coach house; bounded on the north and south by the plantation Bello Sitio, on the east by the old road leading to the plantation Convento, and on the west by the channel "Enea". Another tract of land of 4½ cuerdas, bounded on the north by the plantation Convento, on the south, east and west by the plantation Bello Sitio. Another tract of 124 cuerdas and 3 squares, bounded on the north by the plantation Convento, on the south by Pascual Perez and the farm Aldea, on the east and west by the plantation Bello Sitio. As a result of this petition the following decree was issued: Puerto Rico, April 27, 1896. The petition is hereby granted. A new letter rogatory shall be sent to the Court of Humacao, asking the court to examine the records and give the names and boundaries of the bankrupt estate—And for the faithful compliance thereof, I hereby request you in the name of H. M. the king, and in
409 the name of the queen regent, to carry out these instructions, etc.—Issued in Porto Rico, April 27, 1896. Juan O. Padilla before me Maximino Aybar—There is a seal of the court of first instance of San Francisco.

In the town of Fajardo, on the 25th day of May, 1896, I, a clerk

of this court, accompanied by the Judge, went to the barrio de Quebrada de Fajardo, place called "Bello Sitio" with the purpose of putting in possession of the trustee Don Gabriel Arruza y Echevarria, the property referred to in the preceding letter rogatory, and the said trustee being present, I proceeded to turn over to him the following properties cited in the letter above mentioned, to wit:

Four hundred cuerdas of land, the boundaries of which were more or less seen and approved by said trustee, a building where an incomplete machinery is installed, which building had the roof broken, one syrup tank, one water tank, two bagasse sheds in a ruinous condition, two shacks covered with thatch, a dwelling house with latrine and coach house, two small houses covered with galvanized iron, one frame house with thatch roof, which properties are the only ones that were found on that place, and were formally delivered and put in possession of the said Mr. Arruza, who received them as trustee under the law, and under the penalties therein provided for, of which he was duly advised. In testimony whereof, they signed these presents before the witnesses José F. Franco y Valdes and Don Juan Velasquez, together with the clerk of the court, of all which I, The actuary certify—The marshal Epifanio Rivera—Gabriel Arruza—José Franco Valdes—Juan S. Velasquez—Julio Esparolini.

410 Notification to the widow of Veve—May 27th inst. I, the undersigned, in the presence of Don Juan Vaamonde y Lopez, attorney in fact for the widow of Veve, notified him in due form the decree arising from the preceding letters rogatory, and being duly informed, he stated: That he protests of the possession given to Don Gabriel Arruza of the estate Bello Sitio, because he is the owner and holder of the title on said property, composed of 400 cuerdas, according to the deed executed by the judge of first instance of this district in favor of the widow of Veve, whom he represents, under date of December 18th, 1891, before the notary Don Marcelino Estebane, in payment of a mortgage credit foreclosed against Don José Avalo Sanchez, which was registered in the Registry of Property of Humacao on January 29th, 1892—Such was the statement made by him under his signature, of which I certify. Juan Vaamonde Lopez Esparolini.

Humacao, May 29th, 1896—The above letter rogatory having been complied with, the same is hereby returned to the court wherein it originated and through the same channels. It was so ordered and signed, of which I certify. Angel Acosta—Francisco Socorro—The above petition was filed and attorney José de Guzman Benitez recognized as a party in the premises as representative of the party for whom he appears. In view of the fact that the bankruptcy proceedings have been dismissed, wherein it was ordered that the said proceedings should be consolidated with the executory proceedings referred to in the first document, which resulted in putting the plantation Bello Sitio in the hands of a trustee, and that the said consolidation would serve no purpose, and therefore the prop-

411 erty taken away from the hands of the trustee, for which reasons things should be placed back as they stood at the time

of the consolidation, the attachment on the plantation Bello Sitio is hereby released, and the property shall be turned over to its owner Doña Maria Diaz widow of Veve, notifying the present trustee accordingly, who shall cease immediately as such, and the executory proceedings immediately returned to the District Court of Humacao, with a respectful communication.

In order to turn over the plantation Bello Sitio to Doñ Maria Diaz widow of Veve, through the present trustee, let an order be entered directing the Municipal Judge of Fajardo to make the transfer, the order to be returned as soon as complied with, for file with the other records in the case. Ordered and signed by the acting presiding judge, of which I certify. Jose R. F. Savage. Ramon Falcon.

The following order was issued in the matter of the petition of José Avalo Sanchez, asking that he be shown the claims submitted by the other parties. Puerto Rico, May 10, 1901. The matter came on to be heard, and will be passed upon when submitted in due form—Ordered and signed by the acting presiding judge—of which I certify—J. S. Ramon Falcon.

Later on Don José Avalo Sanchez filed a petition asking permission to examine the records for certain purposes in the exercise of his rights. And the Court issued the following order in that behalf. The petition made is hereby granted. It was so decided by the members of the court and signed by the President, of which I certify—Ramon Falcon.

Subsequently, attorney Don Antonio Sarmineto y Porras
412 on behalf of Don Jose Avalo Sanchez, asked that the decree ordering the consolidation of proceedings and the release of the attachment and the suspension of the proceedings be set aside, and another petition of Jose Avalo Sanchez requesting the appointment of another judge as one of them had withdrawn from the case. The following order was issued—Puerto Rico, September 25, 1901. Don Antonio Sarmiento having shown his appearance for the party whom he represents, and in view of the fact that neither the Presiding Judge nor the Associate Judge of this bench can act in this case, the former on account of having withdrawn before this time and the latter because he was counsel for one of the parties, it is hereby ordered that the records be sent to the Associate Judge Don Jesus Maria Romeu for proper action. Ordered and signed by the members of the court, of which I certify.—Juan R. Ramos—Juan Morera Martinez—Jesus Romeu—Ramon Falcon.

At a later date Don José Avalo Sanchez filed a petition asking that a letter rogatory be sent to the District Court of Humacao for the cancellation of the inscription made in the Registry of Property of said town, of the plantation Bello Sitio in favor of the widow of Veve, and also for the cancellation of the cautionary annotations, and that the proceedings be sent to the senior member of the bar for the designation of the one in turn(?). The following order was issued—Puerto Rico, May 26, 1900—Without passing upon the main question at this time, the supplemental petition made is

hereby granted. Ordered and signed by the President of the Court—of which I certify—Ramon Falcon.

413 Order issued by the District Court at the request of Attorney Don José de Guzman Benitez, in behalf of Doña Maria Diaz, widow of Veve, asking that the plantation Bello Sitio be taken out from the hands of the trustee and turned over to the widow and the inscriptions cancelled by the consolidation of the proceedings and the dismissal of the claim of Don Vicente Balbas. The following action was taken—May 18, 1901—The order has been received and delivered to the judge of Fajardo, who duly complied with the same and returned it.

Attorney Guzman Benitez filed a petition in the name of the widow of Veve asking that the papers returned by the Judge of Fajardo as to the steps taken, be added to the records—The petition was granted—of which I certify—Ramon Falcon—Petition of José Avalo Sanchez, asking that an order be issued to the Registrar of Property of Humacao, cancelling the note that he has been adjudged bankrupt. The following order was issued—Puerto Rico, Feb. 3, 1902—The petition herein is hereby granted—It was so ordered and signed by the Acting Presiding Judge, of which I certify—Jose R. F. Savage—Ramon Falcon—The following action was taken in the matter of a petition of José Avalo Sanchez, submitted through his attorney, A. Sarmiento, Esq.—Puerto Rico, November 22, 1902—Judge Morera having withdrawn from this case, attorney Don Hilario Cuevillas Hernandez is hereby appointed to form part of the court, the acceptance of which appointment shall be notified to the parties—Ordered by the members of the court whose names appear and on the margin, and signed by the President, of which I certify—Ramon Falcon.

Don José Avalo Sanchez filed a petition asking that an-
414 other lawyer be appointed, and the Court replied as follows—Puerto Rico, December 2, 1902—Attorney Don Hilario Cuevillas having refused to accept the appointment, Don Eduardo Acuña Aybar is hereby appointed in his place, which appointment shall be notified to him as well as to the parties for their approval. It was so ordered by the members of the Court and signed by the President—of which I certify—Ramon Falcon. Another order—December 4, 1902—Don Eduardo Acuña does not accept the appointment and Don Angel Garcia Veve is appointed in his place, which shall be notified to him and to the parties for their approval. It was so ordered by the members of the Court whose names appear on the margin and signed by the President—of which I certify—Ramon Falcon. Mr. Avalo Sanchez filed a petition for the appointment of a new lawyer because those who had been designated had declined to accept.

And the following was ordered—Puerto Rico, December 5th, 1902—Taken note of the preceding request for the purposes of law—It was so ordered by the members of the Court and signed by the President—of which I certify.

Another order—December 5, 1902—Don Angel Garcia Veve not having accepted the appointment to act as Judge, Don Juan R.

Ramos is appointed in his place, who has been notified as well as the parties for their approval. It was so ordered by the members of the Court and signed by the President, of which I certify—Evaristo Velez.

Another order—December 17th, 1902—Mr. Avalo Sanchez having objected to the appointment of Juan R. Ramos to act as Judge,
Mr. Henry F. Hord is appointed in his place, who will be no-
415 tified of his appointment as well as the parties for their approval.

Puerto Rico, Feb. 13, 1903—Taken note that Judge Morera has withdrawn from the case and attorney Don Jacinto Texidor appointed to substitute him, who will be notified of his appointment for his acceptance or not. It was so ordered by the members of the Court and signed by the acting presiding Judge—of which I certify—Evaristo Velez—Another order—Puerto Rico—Feb. 16th, 1903—Taken note of the petition of counsel Antonio Sarmiento, dated July 2, 1901, on behalf of Don José Avalo Sanchez, in the bankruptcy proceedings, asking that the decree of May 15th of the same year be set aside, whereby the attachment of the plantation Bello Sitio was released and the consolidated proceedings returned to the Court of Humacao.—In view thereof, these proceedings shall be suspended, and the widow of Veve notified, giving her six days within which to answer about these incidental matters and appointing Judge Tous, Associate Judge, to decide upon the merits of the question. With regard to the first supplemental petition, it is denied because it is impossible to suspend the execution of what has already been executed.—As to the second supplemental petition—it will be duly passed upon, and as to the third, the appointment has been made. It was so ordered by the members of the Court—and signed by the presiding judge, of which I certify—Jose Tous—Frank H. Richmond—Jacinto Texidor—Evaristo Velez.

Attorney Cayetano Coll filed a petition entering his appearance for Don José Avalo Sanchez, which was granted.

Attorney Coll y Cuchi filed a petition on behalf of Avalo Sanchez asking that an order be sent to the Municipal Judge of Fajardo for
transmittal to the widow of Veve, requesting her to answer
416 a certain bill, which was granted.

Another Order—Puerto Rico, March 26th—1903—The presiding Judge of the Court having withdrawn from the case, and Mr. Jacinto Texidor having been designated to act for him, the latter at a subsequent date received a communication from the Attorney General, notifying him that he had appointed Attorney Don Angel Garcia Veve as substitute judge of the District Court to fill all vacancies occurring, and therefore whenever any vacancy occurred, to notify his office so that he might advise Mr. Garcia Veve. And although it appears on these records that attorney Garcia Veve had been previously designated for that purpose, and that he refused to accept, let a communication be sent to the Attorney General calling his attention to the fact, for whatever action he deems proper. It was so ordered and signed by the Judge, of which I certify.—Jose Tous—Luis Mendez Vas—

Another Order—Appointing Jacinto Texidor to pass upon the identical questions which have arisen in the suit between Don José Avalo Sanchez and the widow of Veve, of which he was notified.

Attorney Don Cayetano Coll Cuchi filed a petition asking that the heirs referred to be summoned through the papers to enter their appearance in said incidental questions, and the following order was entered:

In compla*i*nce with Article 269 of the Law of Civil Procedure, the Clerk shall make an entry setting forth that the whereabouts and domicile of the heirs and successors of Doña Maria Diaz Siaca are unknown, who according to the death certificate hereto
417 attached reside in this Island, and let it be published. It was so ordered and signed by the Court, of which I certify. Jacinto Texidor—Jose Tous y Soto—Frank H. Richmond—Reserving his vote.

Another Order—Attorney for Avalo Sanchez filed a petition asking that the other missing heir, whose whereabouts are unknown, be notified, which was granted.

Attorney Guzman Benitez filed a petition on behalf of Doña Maria Diaz widow of Veve, asking that Don Vicente Balbas be required to pay the costs for having dismissed his claim in the bankruptcy proceedings, and that a communication to that effect be sent to the Municipal Judge of Santa Isabel.—The following order was entered: San Juan, May 5th, 1903—Counsel for Doña Maria Diaz having entered his appearance in the premises, he should first file his bill for attorney's fees and then the proper order will be issued. It was so ordered by the members of the Court and signed by the president, of which I certify—Luis Mendez Vas.

Attorney Coll in behalf of Avalo Sanchez files a petition asking that Don Miguel Porrata Doria be required to answer if the name of his said daughter is wrong or whether he had any son of that name. Petition was granted.

Attorney Don Jose de Guzman Benitez, on behalf of the widow of Veve asking that the decree of February 16th, 1903, be restored and that the petition filed by Avalo Sanchez to vacate the complaint, dated July 2, 1901, be denied. The following order was entered: June 14th, 1904. Motion to amend having been filed in due time and form, the same is transmitted to the adverse side giving
418 three days to answer, after which time, whether they answer or not, the matter shall be brought to the attention of the court. It was so ordered and signed by the Court, of which I certify—Frank H. Richmond—José Tous Soto—Jacinto Texidor.

Attorney Cayetano Coll files a petition asking that the petition submitted by the widow of Veve, with reference to restoring certain decree, *de* denied. There is only a note that it was presented.

419 The Creditors of José Avalo Sanchez, Bankrupt,
vs.
The Heirs of Maria Diaz, Widow of Veve.

Judgment.

San Juan, Puerto Rico, *Feb.* 21, 1907.

The Court being fully advised in the premises, and having carefully considered the allegations of the parties, is of the opinion, based on the above facts, that it should declare, and does hereby declare that the present application for a writ certiorari should be granted, and therefore does hereby revoke the decision of the District Court of San Juan, dated March 30, of last year, and with reference to the petition of Maria Diaz widow of Veve dated May 4, 1901, orders that inasmuch as the present bankruptcy proceedings have no further object, that all judicial intervention should cease leaving without effect the consolidation of the bankruptcy proceedings with the executory proceedings followed in the old court of Humacao by the said widow of Veve against the bankrupt José Avalo Sanchez, or any other order issued in that connection, leaving matters as they stood when the consolidation of proceedings was ordered and returning the records to their original files for further action. The attachment levied on the property on account of the bankruptcy proceedings is hereby released and the same shall remain at the disposal of the bankrupt José Avalo Sanchez, provided there be no other legal impediment, with the exception of the plantation "Bello Sitio", which shall remain at the disposal of the heirs of Doña Maria Diaz widow of Veve, and returning the records
420 of the bankruptcy proceedings to the District Court of San Juan for file in the office of the Secretary, without cost to either party. And it is so ordered.

JOSÉ S. QUIÑONES,
J. H. MACLEARY,
ADOLPH WOLF.

Attorney Don Antonio F. Castro, Secretary and Reporter of the Supreme Court of Porto Rico,

Certify: That the foregoing opinion and judgment are a true copy of the originals thereof and to be delivered to Attorney José Sastraño Belaval, I issue the present to which I affix internal revenue stamps to the value of Seven dollars seventy cents, in San Juan, Porto Rico, November 6th, 1908.

I, José E. Figueras, Secretary of the District Court for the Judicial District of San Juan, P. R.

Certify that the foregoing copies are true and correct copies of their originals respectively, filed with the following records in the archives of this office: First piece relating to the administration of the bankrupt estate in the bankruptcy proceedings against José Avalo Sanchez; Second piece in the same matter, Separate proceed-

ings, relating to the receivership, proceedings instituted by José Avalo Sanchez against the heirs of Doña Maria Diaz widow of Veve, praying for the annulment of all proceedings theretofore taken.

In testimony whereof I have hereunto set my hand and seal of this Court on this 12th day of November, 1908.

JOSÉ E. FIGUERAS, *Secretary.*
By A. MARIN MARIEN,
Asst. Secretary.

A correct translation.

F. FANO, *Court Interpreter.*

421 EXHIBIT H FOR THE DEFENDANTS.

To the Registrar of Property:

Tomas Carrera, verbal mandatory for Attorney Don José S. Belaval, appears and says: That his principal needs a literal certified copy of the inscription of a mortgage for six thousand pesos which Don José Avalo Sanchez executed in favor of Don Leonardo Planas, on December the 3rd, 1879, which inscription appears at folio 59 of book 12 of the old Anotaduria; and also regarding the cancellation of that mortgage.

Wherefore he requests that you cause said certified copy to be issued upon payment of proper fees.

Humacao, March 23, 1909.

TOMAS CARRERA.

I, Miguel Planellas Yañez, Registrar of Property of the City of Humacao, P. R. and its district:

Do hereby certify, That at folio 59 of volume 2nd of Fajardo, belonging to the old Anotaduria of mortgages, there is an entry which literally reads as follows:

Don José Avalo Sanchez, by deed executed on December the 3rd, 1879, in Fajardo, before notary Don José Felix Camuñas, acknowledged that he owed Don Leonardo Planas six thousand pesos which he had furnished him during financial straits, agreeing to pay the same at the rate of one thousand pesos yearly in the months of May of the successive years, beginning from the year 1881 to 1886 inclusive, and as security therefor he mortgaged his sugar cane plantation called Bello Sitio, composed of six hundred cuerdas, situated in the barrio of Quebrada Fajardo, municipality of Fajardo,

bounded on the north by the plantation Convento, on the
422 south by lands Doña Carmen Siaca, on the east by Don José Becerril, Doña Petronila Feliciano and Juan de Santiago, and on the west by Don José Concepcion Lopez and Don Mariano Vargas—Humacao, December 5th, 1879—Eugenio de Torres.

I also certify: That on the margin of the above entry there is a note which reads as follows:—

The annexed entry has been transferred to volume 31 of the Archive 5 of the municipality of Fajardo, folio 233 over, property

number nine duplicate, inscription number 6—Humacao, December 26th, 1891—Piñol.

I further certify: That at folio 77 of volume 10 of Fajardo that is number 77 of the archive of this registry of property, there is the 11th inscription of property number nine triplicate, which inscription literally copied reads as follows:

The mortgage credit for the sum of six thousand Mexican pesos as a lien on this property, levied by Don José Avalo Sanchez in favor of Don Leonardo Planas, which upon his death passed to his children Don Leonardo and Doña Dolores Planas Soto, and assigned by the latter to Doña Concepcion Garcia Rivera, and representing the inscriptions Nos. 6, 8 and 9 above, has been totally cancelled by virtue of an order in duplicate transmitted to this registry under date of the 6th ultimo, by the President of the court of this city, Don Juan F. Vias, attested to by the secretary Don José Gabriel Gonzalez, wherein the cancellation of said credit is ordered, as the present owner of said property, Doña Maria Diaz Siaca, has turned into the registry of the court the equivalent of the credit referred to, amounting to three thousand four hundred and twenty dol-
423 lars.—It is further provided in said order the cancellation of the mortgage bond constituted by Don José Avalo Sanchez as attorney in fact for Doña Concepcion Garcia Rivera, in favor of the court of this city inasmuch as said mortgage bond has been substituted, there having been deposited an equal amount in cash. In virtue thereof, this property remains free from the above mentioned incumbrances. It so appears from the order hereinbefore cited, which has been presented at this registry today at ten o'clock according to entry number 371, at folio 225 of volume 10 of the Journal, there remaining on file a copy of said document in the proper files under number 22. The foregoing being in accordance with the registry and documents referred to, I sign the present in Humacao on the 9th of March, 1901. José Toro Rios.

And in compliance with the above request of Don Tomas Carrera as verbal mandatory for attorney Don José S. Belaval, I issue the present in Humacao, Porto Rico, on March 25th, 1909.

MIGUEL PLANELLAS,
Registrar of Property.

There have been cancelled internal revenue stamps to the value of $2.30 in accordance with number 6 of the tariff.—Humacao—date supra.

MIGUEL PLANELLAS.

The above is a correct translation.

F. FANO,
Interpreter & Translator U. S. Court.

424 EXHIBIT I FOR THE DEFENDANTS.

Doctor Luciano Martinez y Menendez, Priest of the Parish of Santiago Apostol of the town of Fajardo, Diocese of Porto Rico.

I hereby certify that in book five of Matrimonies of whites of this parish, at folio 116 over, there appears the following entry, which literally reads as follows: "In this Holy Church of the Apostol Santiago of Fajardo on the 18th day of March of the year 1856, the undersigned priest "beneficiado" Don Francisco Ma. Brignonis, rector of the same, having inquired the will of the parties and the same consenting thereto, the paternal consent having been already obtained as approved by the Christian doctrine, preceded by the publication of marriage bans as provided by the Council of Trent, during the 2, 8 and 14 of last February holy days, no objection having been presented, I witnessed the matrimony which *in facie ecclesia* and which by mutual verbal consent contracted Don Andres Avelino Sauri, Secretary of the Municipality of Aguadilla, native of Caguas and resident of this town, legitimate son of Don Manuel Sauri and Da Maria Antonia Gimenez, with Da Luisa Garcia of this vicinity, legitimate daughter of Don Monserrate Garcia and Doña Hermogenes de Rivera Colon, upon whom I bestowed the nuptial benedictions, there being witnesses Don José Ramon Becerril and Don Ramon Mercado, of which I certify—Franco M. Brignoni. It is a true copy of its original. Fajardo, March 29th, 1909.

LUCIANO MARTINEZ, *Priest.*

Fees: One peso 25 cents—Section 3rd of Tariff No. 4.

The above is a correct translation.

F. FANO,
Interpreter & Translator U. S. Court.

425 J FOR THE DEFENDANTS, NOT ADMITTED IN EVIDENCE.

In the District Court of the United States for Porto Rico.

Equity. No. 379.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCION VEVE et al.

Memorandum Giving Court's Reasons for Dismissing the Cause for Want of Equity.

This a most extraordinary suit. Our jurisdiction is based upon diverse citizenship and the amount involved. The complainant José Avalo Sanchez alleges that in the year 1885, twenty-four years ago, he was indebted to one Maria Diaz in the sum of five thousand six

hundred pesos of the then current money in Porto Rico. This Mrs. Diaz is the mother of some and the grandmother of others of the present respondents.

The complainant mortgaged a finca or farm of four hundred acres that he had near Humacao to this lady to secure this money for two years with interest. Pending the running of the loan, he undertook to collect for her sixteen thousand pesos that were due her from others and represented by three notes. While he was trying to collect this money for her, she, as he alleges, settled directly with the parties that owed it and then wanted him to give up the notes. He refused to do it unless she would give him a third of their face value, in fact enough to cancel the mortgage he owed her. She agreed to do this, as he says, although the present respondents deny it, upon his delivering the three notes back to her. He delivered two of them
426 and the third he could not just then get as it was filed in court. Afterwards he went to the court for it and found, as he says, that it had been stolen by an agent of this woman to whom he owed the mortgage. Then later this Mrs. Diaz brought a suit to foreclose her mortgage against him, but he alleges that he defeated the suit on showing these facts. She appealed from this and had it reversed. The higher court held that he must bring a direct suit against her for the property if it should be adjudicated to her in the meantime, which it seems it was, and must criminally prosecute the person who stole the note. Later in his bill he alleges that at a much later date in these long drawn out proceedings he got possession of this missing note and delivered it to this lady and thus claims that he has finally completed his alleged contract with her. He brought this direct suit, as thus instructed by the superior court, against her but the judgment went against him, and this evidently after a full showing of all the issues he is endeavoring to try in this court now. He appealed from this judgment some six or seven years before American occupation of Porto Rico. He alleges that because of the dilatory tactics of the said Mrs. Diaz and her agents and because of the interposition of all sorts of dilatory motions he was unable to get a decision of this appeal before American occupation of the Island, and finally it got into the district court at San Juan and that the records or a portion of them were stolen from there, and that in 1904 the local legislature abolished this district court at San Juan and failed to give any other court jurisdiction of the cause.

He sets up all this in great detail and makes a lame effort to excuse his long delay through all the years, and prays that
427 the whole thing be set aside and he be declared to be the owner of the premises and given possession of the same, etc., etc. He filed his bill in this court on April 3, 1906, which he alleges was the first time he had a right to file it, as he was under the supervision of some sort of a trustee in bankruptcy for many years, but does not satisfactorily tell why his trustee in bankruptcy did not attend to these appeals for him. From this date up to September of that year a large number of amendments of the bill and a large amount of pleading, demurring, etc., was indulged in,

and on September 12, 1906, the bill was completely rewritten and the battle virtually begun over again. Shortly thereafter some additional pleading was indulged in and on April 8, 1908, a considerable amount of amending of the bill took place.

The respondents severally pleaded res adjudicata because of the recovery in the insular courts. Complainant's counsel moves to strike this plea because the same, he contends, should be a demurrer as he alleges that all the facts set up in the plea appear on the face of the bill. We have given a great deal of attention to the bill, the demurrers, the pleas, answer in support of them, etc., etc., in this cause and can truthfully state, as we did when beginning this memorandum, as above, that it is a most peculiar case.

We fail to appreciate the technical position taken by counsel for complainant when he moves to strike the pleas that are now in to his last amended bill. We have gone over the record so closely and examined the briefs of counsel to such an extent as that we feel we are now enabled to say from the record that there is in fact no equity in the bill at all. That its allegations show nothing on the part of complainant but an effort to excuse his own inexcus-
428 able laches and to induce this court of concurrent jurisdiction, that has no appellate jurisdiction from the insular courts, to take hold of a case that has in substance and in fact been tried and settled finally in those courts, and in which the complainant was beaten at every turn after a full hearing. It would tire one to detail in a memorandum like this the different phases and issues of this litigation that were tried out even unto the supreme court of the Island of Porto Rico many years before American occupation. The bill as here filed, although the same was afterwards left out when the bill was amended, charged fraud and corruption against different judges, courts and officials connected with the matter in the time of the Spanish regime, and even as finally amended, charges all sorts of deception, intrigue and fraud against some of these respondents, and all of which they deny in their answers filed in support of their pleas.

We do not think in the first place that complainant has shown any diligence in and about his rights or the prosecution of his appeals, and in the second place we do not hink it is the affair of this court, if in fact the legislature deprived him of any alleged right regarding his appeal. The expression used by Mr. Justice Brewer when delivering the opinion of the court in Cessna v. United States, 169 U. S. 186, that: "It is the duty of a nation receiving a cession of territory to respect all rights of property as those rights were recognized by the nation making the cession, but it is no part of its duty to right the wrongs which the grantor nation may have theretofore committed upon every individual * * *" has some application by analogy here. While the treaty provides that property rights should be respected and that all suits begun at the date of the
429 treaty should be carried to a finality in the courts where they were or those that were substituted for them, still when matters were settled by the Spanish courts during the Spanish

regime in Porto Rico or since, we cannot see that this court, not having any appellate jurisdiction, has any right to interfere.

We have given this matter a great deal more attention than the writing of this mere memorandum would indicate and we have examined the elaborate brief filed by counsel for respondents, with great care, and we have concluded that it is our duty to ignore the motion to strike the plea and to at this time end the entire proceeding by holding, as we do, that the plea of res adjudicata is well founded in fact and in law, and that even without the pleas, the allegations of the bill itself constitute no cause of action in law that would entitle complainant to file a bill. This presents a square issue of law that can be passed upon by a higher court if necessary, and is a much better mode of disposing of the cause than endeavoring to take a vast amount of proofs that in our opinion would be useless for lack of equity in the bill itself. The pleas will therefore be sustained and the bill will be dismissed with costs and all cautionary or lis pendens notices will be released unless superseded on appeal, and a decree to that effect will be entered.

——— ———, *Judge.*

430 In the District Court of the United States for Porto Rico.

Equity. No. 379. San Juan.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCION VEVE et al.

This cause having been heretofore submitted, after argument by counsel for the respective parties, upon a motion to strike from the files the answers of the respective defendants, which include a special defence of *res adjudicata;* and upon the consideration of said motion the Court having found it advisable to review all the pleadings in said cause and to consider the sufficiently of complainant's bill of complaint as finally amended; and the Court having recently filed its opinion and decision in regard thereto, holding that it now appears from the allegations of said bill of complaint that complainant has been guilty of gross laches in asserting his claim of right in this court and that said claim has become long since *res adjudicata* by the decisions of the courts of Porto Rico; it is, therefore, hereby now

Ordered, adjudged and decreed that the bill of complaint in this cause be, and the same hereby is, dismissed for want of equity for the reasons above specified, with costs against the complainant; and that the proper Registrar of Property be directed to vacate and cancel any annotations or entries which may have been made in the books of his Registry by the complainant, or in his behalf, by virtue of the bringing of this suit or the pendency thereof, the same to be done at the cost of the complainant.

Done and ordered in open court at San Juan, this 23rd day of February, A. D. 1909.

B. S. RODEY, *Judge.*

431 UNITED STATES OF AMERICA,
District of Porto Rico, ss:

I, John L. Gay, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing typewritten page to be a true and correct copy of the Final Decree in the cause entitled Jose Avalo Sanchez vs. Concepcion Veve et al., Equity, No. 379, San Juan, as the same remains of record and on file in the office of the Clerk of said court, under date of February 23rd, A. D. 1909.

Witness my hand and the seal of the Court aforesaid at San Juan, Porto Rico, this sixth day of April, A. D. 1909.

(Sgd.) JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.,
By A. M. BACON, *Deputy.*

432 K FOR THE DEFENDANTS, OFFERED, BUT NOT ADMITTED IN EVIDENCE.

Translation.

Sentence.

In the town of Humacao, on the eleventh day of August, eighteen hundred and ninety-two, Mr. Romulo Villahermosa y Borao Judge of the First Instance for the said town and for its District.

This is an action of "Mayor Cuantia" pending in this court, and brought by Mr. José Avalo Sanchez, property owner and resident of Fajardo, defended and represented by attorney Rafael Lopez Landron and by the procurator Thomas Carreras, against Lady Maria Diaz viuda de Veve, property owner and resident of the same town, who is represented by the procurator José C. Bajanda, under the direction of attorney José Sastraño Belaval, the remedy sought being the cancellation of a mortgage credit and the collection of a sum of money.

1. On the third day of April, 1891, procurator Thomas Carreras, on behalf of José Avalo Sanchez, filed a bill in this court, averring as follows:

1. That in the month of May, 1885 Sanchez placed a voluntary mortgage upon the plantation "Bello Sitio" for the sum of five thousand six hundred pesos, drawing interest at one per centum per month, which sum he was to pay to his creditors in two instalments, the first one falling due on the 18th day of May, 1886, and the second on the same month and day of 1887.

2. In the year 1886 the debtor paid to the widow of Veve,
433 as advanced interests, the sum of $269.64, there remaining a balance in her favor of $21.51 at the expiration of the first instalment. In 1887, the second period or term, he delivered 56 hogsheads of sugar, valued at $1,568.00, or $28.00 each, and also 64 hogsheads of molasses valued at $722.43. The widow of Veve, or rather, her attorney-in-fact Mr. Juan Vaamonde also received $300.00 which Mr. Enrique Olozegui delivered to him on behalf of

the claimant, Sr. Avalo Sanchez, on the 18th of March, 1888; and, finally, an agreement was entered into between him and the lady holding the mortgage credit, under which she endorsed over to him three notes held by her against the Succession of Doña Carmen Diaz, amounting in all to $16,000, in order that Sanchez should turn them into cash; Sanchez accepted the commission under the expressed condition that one-third of two notes amounting to $11,000, equivalent to $666.67, and 40 per cent of another note for $5,000 or $2,000, be de-*cu*ted from his mortgage credit. That the amount Sanchez was owing on January 20th, 1889, on the mortgage credit being $5,600, plus $1,792 for the interests stipulated, in all amounting to $7,392.00, inasmuch as there were placed to the credit of his account $8,826.74 for the reasons above stated, there is, of course, a balance to his favor amounting to $1,134.74, which the alleged creditor should refund to him.

3. That as Sanchez carried out the agreement he made, he filed a suit of conciliation against Don José Roman y Diaz, representing the Succession of Doña Carmen Diaz, in the municipal court
434 of Luquillo on the 15th day of October, 1887, to recover from the said Succession the amount of two notes, one for $7,324.19 and another for $3,675.81, which proceeding was suspended by order of Don Juan Vaamonde, as it appears from the certificate issued by the Judge and clerk of the said municipal court of Luquillo. And on the 26th of the same month and year he attempted another proceeding of conciliation against the said Roman Diaz, acting as above indicated, to recover the sum of $5,000 representing a note endorsed to him by Doña Maria Diaz on the 22nd of the same month, as it appears from the records of the proceeding of conciliation, which I enclose duly certified to. The ordinary action of "mayor cuantia" was not continued because Mr. Vaamonde himself so ordered in obeyance to instructions received from the said lady, sister of Doña Carmen, the debtor, and aunt of the Succession.

4. That Sanchez had no objection to suspending the judicial collection, but refused to return the notes unless the indorser comply with the agreement she entered into, as it finally was done by virtue of an instrument executed by Juan Vaamonde, who had sufficient power from said lady to do so, the 20th day of January, 1889, a copy of which is attached to the records.

5. That in pursuance of this contract he delivered the two notes, one for $7,324.19 and another for $3,675.81, and agreed to deliver to Mrs. Veve the third note for $3,675.81 which was made part of the record of an action brought by a third party and
435 which — without which requisite Mrs. Veve was under no obligation to deduct from the mortgage she held against him one third of eleven thousand pesos and 40 per cent of the remaining five thousand pesos.

6. That in order to better do this, Sanchez being indisposed, he gave to Mr. Vaamonde himself two letters, one for the procurator D. Thomas Carreras asking him to detach the said note from the records of the action brought by a third party alluded to, and another for the procurator Borges, asking him to assist the former to

detach the said note and deliver it unto Mrs. Veve as soon as possible.

7. That in spite of all, Mr. Vaamonde did not deal with anybody except with his lawyer José Sastraño Belaval, who was his brother-in-law, and far from delivering the said letter to procurator Carreras, Sanchez' agent in the third party proceedings hereinbefore mentioned, that he may detach the instrument referred to, he called the other procurator, Mr. Borges, and asked him to go to Mr. Ramos's notarial office and bring him the well known "expediente", all of which was done by Borges, to whom the lawyer interested in the transaction gave back the voluminous package, but minus the note, which at his own risk and for his own account he detached, Borges having obtained from Vaamonde, after certain demands were complied with, a receipt in favor of Carreras, who was absolutely ignorant of this mix, in which receipt it is stated that Vaa-
436 monde received from the said procurator the note so often referred to.

8. That in consequence of all this, Mr. Sanchez could not possibly deliver personally to Mrs. Veve either in her plantation or in her business house the said document, as it has been agreed upon; but inasmuch as it was already in her possession, which was the all important thing for her, the stipulation made in the agreement was thereby fulfilled and the mortgage debtor was entitled to have placed to his credit the third part of the $11,000 and 40% of the $5,000; but instead of that he saw with a great deal of displeasure that the mortgage credit deed was being enforced and that an attachment was placed upon his plantation "Bello Sitio".

9. That all the *tramitations* of the executory action were gone through, and judgment was given in favor of the alleged debtor, from which the plaintiff in the executory action took an appeal, which was sustained, the higher court having reversed the judgment, ordering the continuance of the execution for the sum of $5,600 plus the interests agreed upon, less the $992.07, the payment of which Sanchez proved, as it appears from the certified copy of the judgment issued by the escrivener of the court, also exhibited.

2. The principles of law cited by the actor are as follows: One. That obligations arising from contracts have the effect of law, are binding upon the contracting parties and should be observed
437 according to its stipulations. And therefore, the contract arising from the instrument executed by Mr. Vaamonde, as the legal agent and with the necessary authorization of Mrs. Veve, is valid, from the moment that the condition imposed upon Sanchez of turning the note over is considered as having been complied with, inasmuch as the party obligated prevented its fulfillment by taking possession of said instrument through artful devices instead of by the legal means necessarily to be used. (Sections 1091, 119 and 1278 of the Civil Code). Second:—That as contracts are binding upon the parties thereto, provided the essential conditions required for their validity exist, whichever may be the form in which they may have been executed, the private contract dated January 20th, 1889, has wholly substituted that arising from the mortgage deed executed by Sanchez in favor of Mrs. Veve, since there has been a

change in its object, which was that he should receive in cash and in two instalments the fifty-six hundred pesos, plus interests, and the original obligation having changed entirely, the lady creditor agreed to pay off her mortgage credit with a third of the eleven thousand pesos and with forty per cent. of the five thousand pesos, which she of her own volition ceded to the debtor at the time she endorsed to him the notes for those amounts held by her against the heirs of her sister Carmen Diaz. This brought the question of compensation, Mrs. Veve and Mr. Avalo Sanchez being debtors and creditors reciprocally, of their own right, which constitutes compensation, because each of them is bound principally and is, at the same time, the principal creditor of the other. Then, the debts are for a sum of money; both of them have fallen due and have become demandable and neither of them is subject to any suit in-
438 stituted by a third party, the inevitable result being that both obligations have become extinguished to the concurrent amount. (Sections 1156-1195-1202 and 1203 of same Code).

Third. That upon both credits having been liquidated up to January 20th, 1889, which is the date of the second contract, Mrs. Veve's credit amounted then to $7,392.00 and Sanchez' $8,526.00, which shows that the said lady received her concurrent amount and is under the obligation of paying to Mr. Sanchez the balance resulting in his favor, amounting to $1,174.74; and that she should also cancel the inscription of the mortgage credit on account of its having become extinguished.

Fourth. That although a decision was rendered by the higher court in the matter of the executory action brought by said lady against Sanchez to recover the amounts of said credits, in which decision orders were given for the continuance of the execution, he still has the right to bring an ordinary action, because under section 1477 of the Code of Civil Procedure such decision- are not res judicata.

Fifth. The persistent litigant should be punished by having all costs incurred on his account taxed against him. (Legal Doctrine.)

That an order was issued by the court, referring the bill to Doña Maria Diaz, viuda de Veve, and that her procurator José C. Bajanda personally filed an answer denying all the statements contained in the bill, excepting the first act alleged and that referring to the small amount disposed of in the executory action having been credited to the Interest- Account, such as the participation alleged to have been taken by Juan Vaamonde, as Mrs. Veve's attorney-in-fact in all the transactions mentioned by plaintiff; the state-
439 ment that José Diaz y Roman was Mrs. Veve's debtor in the ridiculous performances at the Municipal Court of Luquillo, and that the documents upon which the plaintiff bases his claims are false.

That the facts alleged in the bill were afterwards amended as follows: First, the second and fifth paragraphs by substituting the words: "equivalent to $666.00 * * * &c." for: "equivalent to 3,666.00 * * * &c." and in the fifth, where it says: "and another for 3,675.81 * * * " for: "and another for 5,000."

These are all clerical errors, and although they may not have passed unnoticed to the good judgment of the court, yet they may not be at the proper time so corrected as to make them more clear and to prevent the other side from maliciously laying great stress upon them with the view of confusing and changing the nature of the argument by having the question looked into from the wrong viewpoint.

2. That Mr. Carlos Benites was indebted to Mr. Antonio Veve in the sum of $9,100.00 used in running the plantation "Fortuna" which he had leased, which sum Mrs. Modesta Benitez agreed to pay by contract entered into with said D. Carlos on the 29th of October, 1883, as appears from the private instrument exhibited by him, with reference to which he said under oath he never had any knowledge of its existence.

3. That subsequently Mrs. Modesta Benitez sold to Doña Carmen Diaz, Viuda de Veve the plantation aforementioned, Mrs. Diaz assuming the debt incurred by the said Benitez, which interests due and unpaid swell to $11,000, as it must appear from the Inventory Book and trial balances taken in the year 1884, date of Mr. Veve's death, and from the Ledger, Journal and Letters and

440 Cablegrams Copy Book now in the hands of Mrs. Veve.

4. That not a single one of the particulars referred to in the only fact alleged in the answer is true, wherefore those alleged to be false by the plaintiff, the others referring to Mr. Juan Vaamonde and Mr. José Diaz y Roman and, finally, that in which it is affirmed that the documents upon which the actor bases her contentions are fraudulent, are hereby denied.

Whereas, the Court being then ready to examine the proofs, both sides introduced those deemed best to their interests during the first period for the admission of proofs, those approved having been admitted, whereupon the Court ordered that they be attached to the records of the case.

Whereas, in the conduct of this case the provisions of the Law of Civil Procedure have been duly complied with.

Whereas, the issue in this case is limited to compelling Mrs. Maria Diaz viuda de Veve to cancel a voluntary mortgage placed upon the plantation "Bello Sitio," on the ground that the obligation therein contracted by plaintiff, Mr. José Avalo Sanchez has become extinguished because, as it is alleged, the mortgage credit being for $5,600.00 plus interests amounting to $1,792.00, which makes a total of $7,392.00, inasmuch as he has been credited with $8,826.74 for the reasons already mentioned, there remains a balance in his favor of $1,134.74.

Whereas, in order that the defendant Mrs. Veve may be compelled to cancel the mortgage credit it would have been absolutely imperative that the actor should have fully proven not alone the amounts set forth in the liquidation introduced by him, but that the sums appearing on the Debit had been devoted to paying off the said mortgage.

441 Whereas, under the most wise and impartial rules of sound judgment, proper consideration has been taken of proofs

submitted, the Court thinks that the foregoing allegations have not been established, but on the contrary, that according to the testimony of the witnesses introduced by defendant, who on account of their independence, position and other circumstances deserve full belief, the actor José Avalo Sanchez proposed Mrs. Veve that upon her paying back to him the $4.000 or $5,000 he would in return pay her the debt by giving back the property to her, this having taken place after a decision was rendered in the matter of the executory action involving this same mortgage, in which decision the plantation "Bello Sitio" was adjudicated to said lady, which fact shows that in March of 1891, date in which it transpired, the actor had not yet paid on account of the mortgage credit an amount sufficient to extinguish the obligation contracted, whereby he may be entitled to its cancellation.

4. Whereas, it appears from the proofs exhibited during the trial of the executory action involving the mortgage credit here in dispute, brought by Mrs. Veve against Sanchez, and which have been made part of these records, that the pretensions of the actor are not supported by law, no proofs having been presented to establish them, wherefore the legal maxim: "actors non probante reus est absolvendus" becomes fittingly applicable;

5. Whereas, no proof has been introduced as to the certainty and legitimacy of the contract relating to the three notes of the heirs of Mrs. Carmen Diaz, nor as to the fulfillment of the conditions therein stipulated;

6. Whereas, the alleged payment of a bill for $300.00 with
442 the authorization of Mr. Juan Vaamonde, as the administrator of defendant, has also failed to be proven, as well as the delivery of the 56 hogsheads of sugar referred to by plaintiff;

Whereas, by the reasons above mentioned the bill filed by Mr. José Avalo Sanchez is clearly temerary, whereby he has become liable to the payment of the costs of this action, under Law 8th, Title 22 of Partidas 2nd and 3rd, and Title 19th of Book 11th of the Latest Recopilation, which doctrine is also sustained in a number of decisions of the Supreme Court, among them one dated June 26, 1861, and another dated January 9, 1862;

In pursuance of the provisions of Sections 90 and 156 of the Mortgage Law, now in force in this Island, and Sections 1214 and 1230 of the Civil Code and of the decisions of the Supreme Court alluded to,

I decide that I must find, as I do hereby find, for the defendant Mrs. Maria Diaz, viuda de Veve, costs to be taxed against the plaintiff José Avalo Sanchez.

And, therefore, I so definitely decree and sign.

ROMULO VILLAHERMOSA.

Publication.—This is to certify that the above decision was read and made public by Mr. Romulo Villahermosa y Borao, Judge of the First Instance for this District while sitting in open court on this day.

CARMELO MARTINEZ.

Mr. José E. Figueras, Clerk of the District Court for the District of San Juan.

443 Certifies: That the above decision is a true and exact copy of one rendered in the matter of a suit brought by Mr. José Avalo Sanchez vs. Mrs. Maria Diaz viuda de Veve, for the recovery of a sum of money, on file in this office.

And at the petition of an interested party I issue this copy at San Juan, Puerto Rico, this 16th day of April, 1906.

Amended: V—mando—between lines: Sr.—falso—temerary—Good.

(Signed) JOSÉ E. FIGUERAS, *Clerk.*

There is a seal.

Translation made by the official interpreter of the U. S. District Court.

M. S. GEIGEL.

I, Jose Figueras, Secretary of the District Court of the Judicial District of San Juan,

Do hereby certify, That there is on file in the registry of this Court the second portion of the records of the proceedings instituted in the old Court of First Instance of Humacao, by Don Jose Avalo Sanchez against Doña Maria Diaz widow of Veve, for the purpose of setting aside an executory action for the collection of a mortgage credit, there appearing from said records that the the said Court of Humacao rendered judgment on August 11, 1892, dismissing the case. It also appears from said records that Don Jose Avalo Sanchez took an appeal from said decision on August 18th, 1892, which appeal was granted on the 26th of the same month, whereupon the records were sent to the Higher Court or Audiencia Territorial.

444 That there is nothing on record showing that said appeal was carried through nor sustained by the appellant nor that any further steps were taken in that behalf by anybody before the Higher Court.

And at the request of Doña Maria Diaz, widow of Veve, I issue the present in San Juan, P'to Rico, January 16th, 1908.

(Signed) JOSÉ E. FIGUERAS,
Secretary.

Certified Correct.

F. FANO,
Court Interpreter.

445 EXHIBIT L FOR THE DEFENDANTS.

In the District Court of the Judicial District of San Juan, P. R., First Section.

Proceedings in Bankruptcy of JOSÉ AVALO SANCHEZ.

Execution of the Sentence of the Supreme Court of Porto Rico of February 21, 1907.

In Vacation.

Order.

On the 5th day of July, 1907, there appeared before the Judge in his chambers, José Avalo Sanchez and the Sucesion de la Viuda de Veve, the Judge listened to them through their lawyers, conceding to them until the 10th day of July to present their allegations in writing. These allegations have already been presented and we must therefore proceed to decide this case.

The Supreme Court of Porto Rico deciding upon a motion of *certiorari* resolved on the 21st day of February, 1907, that "it should declare and does declare at the same time the termination of the judicial intervention in the same, leaving without effect the filing of records decreed in the bankruptcy proceedings, the executory proceedings followed in the now abolished court of Humacao by the said Viuda de Veve against the bankrupt José Avalo Sanchez, and any other which might have been effected in these proceedings, replacing the powers which had reverted to the State, when the filing of records were decreed and returning the decrees to their original standing as far as the rest is concerned, the order for the occupation of the properties decreed in the present proceedings was released and now remain at the free disposition of the bankrupt, José Avalo Sanchez, unless prevented by some other legal objection, with
446 the exception of the estate Bello Sitio, which remains at the disposition of the heirs of Doña Maria Diaz, Viuda de Veve.

Such a resolution was forwarded with the certified copy to this District Court, and on the 31st day of May, 1907, Judge Aldrey of the First Section of this court decreed "that the orders contained in the resolution of the Supreme Court be complied with and that the documents be added to the decrees."

Such being the state of affairs, the bankrupt, Avalo Sanchez presented to the Secretary of this court a letter on the 24th of June, 1907, asking that an order be given to place him in possession of certain properties occupied, which did not form part of the Hacienda Bello Sitio, as is shown in the explanatory rogatory letter given at Humacao on the 27th of April, 1896, which appears on pages 226 and 227 of the second volume of the proceedings, and in his letter the said bankrupt describes the referred to properties.

The Secretary issued the order stating that he issued it by order

of the Judge of the First Section of this District Court, and the Marshal of the District Court of Humacao to whom the order was issued complied with it and placed Mr. José Garcia Becerril, the party designated by the bankrupt, in possession of the parcels of land referred to in the order, notifying the heirs of Viuda de Veve, mentioned therein, of said possession.

And this having taken place, the Sucesion de la Viuda de Veve have requested the Judge of this court to declare null the order referred to, issued by the Secretary, etc., the parties interested having been heard only on this point.

Is the order issued by the Secretary of this court author-
447 ized by the order of the Judge of the same of May 31, 1907, ordering the compliance in all its parts of the resolution of the Supreme Court on the 21st of February, 1907?

In our opinion, this is the question which must be resolved.

The Chief Justice Quiñones in an opinion given in this case and accepted unanimously by the Supreme Court, states:

"That the procedure followed in these proceedings are illegal, there is no doubt * * * it cannot be denied that these voluminous proceedings have nothing of bankruptcy, but the name, and they do not seem to have had any other purpose but that of interfering with the compliance of the sentence of public sale which took place in the executory proceedings instituted by Viuda de Veve against the Hacienda Bello Sitio, and the occupation of this Hacienda during the bankruptcy proceedings * * * Meanwhile after fifteen years have elapsed since Mr. Avalo Sanchez declared himself bankrupt, there is nothing to show who are his creditors, nor if they have or have not been called together for a general meeting for the purpose of naming a manager, nor if a single step more has been taken in the proceedings, except the filing of executory proceedings by Viuda de Veve and the occupation of the Hacienda Bello Sitio."

It seems from the general sense of the opinion, and especially from the paragraphs which we have transcribed, that the Supreme Court in decreeing its resolution of the 21st of February, 1907, declaring illegal the proceedings, held precisely under the direction of the Judge who is sitting, arrived to the conclusion that the only object of the bankruptcy proceedings was to prevent the carrying into
effect of the executory proceedings instituted against the
448 bankrupt and the occupation, as was done, of the Hacienda Bello Sitio. But in spite of this, in the said resolution of the 21st of February, 1907, the Supreme Court releases the order of the occupation of the property, which remains at the free disposition of the bankrupt, with the exception of the Hacienda Bello Sitio.

And these orders which were derived from the documents existing on pages 226 and 227 of the second volume of the Records of Bankruptcy, were the ground upon which the Secretary of this court issued the order which we are asked to annul, but the truth is that the said document contained on pages 226 and 227, or the rogatory letter issued for the occupation of the properties of the bankrupt, wherein other parcels of land are described besides the Hacienda

Bello Sitio, cannot be examined alone, for it is necessary to connect it with those contained on pages 230 and 231 of the same second volume of the Administration of the bankrupt, or the records of occupation and delivery of the property, complying with said rogatory letter. By this last document it is evident that "Bello Sitio" composed of 400 cuerdas of land was taken possession of, together with a machine house, etc., etc., which were the only properties found on said place.

And thus we have that in the first document there appeared described certain properties, which it seems, on the second document, were not found, and therefore could not be occupied, and such properties not having been found nor occupied at that time are the properties which the Secretary has ordered to be delivered, and which the Marshal has delivered to the bankrupt, Avalo Sanchez.

This being so, we believe that in no way at all is the
449 order issued by the Secretary of this court on the 26th of June, 1907, authorized by the order of the 31st of May, 1907, nor by the resolution of the Supreme Court of the 21st of February, 1907, and in virtue thereof, in this our decree we declare that we must annul and do annul the said order issued in this matter by the said Secretary of this court on the 26th of June, 1907, and as a consequence thereof we also declare annulled all the acts carried out by the Marshal of the District Court of Humacao in complying with said order issued in good faith, but without authority whatsoever for it, everything remaining in the *status quo* in which it was previous to the 26th of June, 1907, on which day the order was issued.

Dictated in my chambers this 10th day of July, 1907.

(Signed) EMILIO DEL TORO,
Substitute Judge.

Don Jose Figueras y Jimenez, Secretary of the District Court of the Judicial District of San Juan, Puerto Rico, certifies: that the preceding document is a true and exact copy of the original which exists in the bankruptcy records of José Avalo Sanchez, and he also certifies that against the preceding order, no appeal has been taken.

And at the request of the lawyer, Don Jose de Guzman Benitez the present copy is issued on this the 20th of February, 1908, in San Juan, P. R.

(Signed) JOSÉ FIGUERAS, *Secretary.*

Certified correct:

F. FANO,
Court Interpreter.

450 The jury then retired and thereafter returned into court with a verdict in favor of the plaintiff as to the several tracts of land described in the complaint, together with damages for the wrongful detention thereof in the sum of $4205.10, on the 11th day of December, 1909.

The foregoing constitutes the testimony, and statement of all the

evidence introduced and offered or rejected upon the trial of this cause with the instructions to the jury, exceptions thereto, and motions for direction of verdict at the close of the plaintiff's case and of the whole case, and exceptions thereto.

I, Bernard S. Rodey, do hereby certify that I am the Judge before whom the above entitled cause was tried; that Arthur J. Harvey was the official stenographer of the court who reported said cause; that the annexed and foregoing shorthand report of the evidence, duly certified to by the said official stenographer, is the report of the evidence in said cause and contains all of the oral evidence offered, given or introduced in said cause by the respective parties and certain exhibits that were rejected upon the trial thereof; all objections and motions of the said parties thereto, or any part thereof, and all rulings of the Court upon such objections and motions, and all exceptions to such rulings, as well as the charge of the Court to the jury, the objections thereto, the rulings thereon and the exceptions to said rulings; the said report with this certificate is ordered to be filed and made a part of the record in this cause.

Signed this 16 day of April, 1910.

(Signed) B. S. RODEY,
Judge of the District Court of the United States for Porto Rico.

451 And the said defendants, Concepcion Veve et al., on the 16 day of April, 1910, and within the time allowed by law, tendered this their bill of exceptions, it having been reduced to writing and all of the exceptions taken by the defendants during the progress of said trial being embraced therein, praying that the same be signed, sealed and made a part of the record in this cause, which is accordingly done on the 16 day of April, 1910.

(Signed) B. S. RODEY,
Judge of the District Court of the United States for Porto Rico.

452 In the District Court of the United States for Porto Rico.

No. 480. Law.

JOSÉ AVALO SANCHEZ
vs.
CONCEPCIÓN VÉVE Y DIAZ et al.

I, John W. Gay, Clerk of the District Court of the United States of America, in and for the District of Porto Rico, do hereby certify the foregoing four hundred and fifty-one typewritten pages, numbered from 1 to 451, inclusive, to be a full, true, and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error, as per præcipe of the plaintiffs-in-error.

I further certify that the attached map, marked "Exhibit A for Def't #480," is the original exhibit presented in evidence at the trial of said cause, (of which there is no copy on file in this office) and that it is sent herewith at the request of the plaintiffs-in-error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at San Juan, Porto Rico, this twentieth day of April, A. D. 1910.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.

453 In the District Court of the United States for Porto Rico.
Sitting at San Juan.

At Law. No. 480.

JOSÉ AVALO SANCHEZ, Plaintiff,
vs.
CONCEPCIÓN VÉVE Y DIAZ, JOSÉ SASTRAÑO BELEVAL, Her Husband; Josefina Porrata Doria, Julio Ferrer Torres, Her Husband; Celina Porrata Doria y Véve, Albertina Porrata Doria y Véve, Luz Porrata Doria y Véve, a Minor; Raquel Porrata Doria y Véve, a Minor, the Two Latter Being Represented by Their Father Miguel Porrata Doria; Maria Porrata Doria y Véve, Guillermo Oppenheimer, Her Husband; Josefa Véve y Diaz, Prisco Vizcarrondo, Her Husband; Clotilde Véve y Diaz, Widow, and José Sastraño Belaval and Miguel Porrata Doria, Individually, Defendants.

Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judge of the United States District Court for Porto Rico, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States District Court for Porto Rico before you, between Concepción Véve y Diaz, José Sastraño Belaval her husband, Josefina Porrata Doria, Julio Ferrer Torres her husband, Celina Porrata Doria y Véve, Albertina Porrata Doria y Véve, Luz Porrata Doria y Véve a minor, Raquel Porrata Doria y Véve a minor, the two latter being represented by their father Miguel Porrata Doria, Maria Porrata Doria y Véve, Guillermo Oppenheimer her husband, Josefa Véve y Diaz,
454 Prisco Vizcarrondo her husband, Clotilde Véve y Diaz, widow, and José Sastraño Belaval and Miguel Porrata Doria individually, plaintiffs in error and José Avalo Sanchez, defendant in error, a manifest error hath happened, to the great damage of the said Concepción Véve y Diaz, José Sastraño Belaval her husband,

Josefina Porrata Doria, Julio Ferrer Torres her husband, Celina Porrata Doria y Véve, Albertina Porrata Doria y Véve, Luz Porrata Doria y Véve, a minor, Raquel Porrata Doria y Véve a minor, the two latter being represented by their father Miguel Porrata Doria, Maria Porrata Doria y Véve, Guillermo Oppenheimer her husband, Josefa Véve y Diaz, Prisco Vizcarrondo her husband, Clotilde Véve y Diaz, widow, and José Sastraño Belaval and Miguel Porrata Doria individually, plaintiffs in error, as by their complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the same at the City of Washington on the 5" day of May next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States, the 8" day of March in the year of — Lord one thousand nine hundred and ten.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk of U. S. Court for Porto Rico.

455 Allowed by:

B. S. RODEY,
District Judge.

Certified Copy of the foregoing Writ of Error was filed in the Clerk's Office March 28, 1910.

JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.,
By A. M. BACON,
Deputy Clerk.

456 [Endorsed:] No. 480. Law. In the District Court of the United States for Porto Rico. José Avalo Sánchez vs. Concepcion Veve y Diaz et al. Writ of Error. Filed Clerk's Office, United States District Court, March 8, 1910. John L. Gay, Clerk of the Court. By C. A. Davidson, Deputy.

Certified Copy of the within Writ of Error filed in Clerk's Office March 28, 1910.

JOHN L. GAY, *Clerk.*
By A. M. BACON, *Deputy.*

457 In the District Court of the United States for Porto Rico, Sitting at San Juan.

At Law. No. 480.

JOSÉ AVALO SANCHEZ, Plaintiff,

vs.

CONCEPCIÓN VÉVE Y DIAZ, JOSÉ SASTRAÑO BELEVAL, Her Husband; Josefina Porrata Doria, Julio Ferrer Torres, Her Husband; Celina Porrata Doria y Véve, Albertina Porrata Doria y Véve, Luz Porrata Doria y Véve, a Minor; Raquel Porrata Doria y Véve, a Minor, the Two Latter Being Represented by Their Father Miguel Porrata Doria; Maria Porrata Doria y Véve, Guillermo Oppenheimer, Her Husband; Josefa Véve y Diaz, Prisco Vizcarrondo, Her Husband; Clotilde Véve y Diaz, Widow, and José Sastraño Belaval and Miguel Porrata Doria, Individually, Defendants.

Citation.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to José Avalo Sanchez and Henry F. Hord, his attorney, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States in the City of Washington, D. C., within sixty (60) days from the date of this writ, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for Porto Rico, wherein Concepción Véve y Diaz, José Sastraño Belaval her husband, Josefina Porrata Doria, Julio Ferrer Torres her husband, Celina Porrata Doria y Véve,
458 Albertina Porrata Doria y Véve, Luz Porrata Doria y Véve a minor, Raquel Porrata Doria y Véve a minor, the two latter being represented by their father Miguel Porrata Doria, Maria Porrata Doria y Véve, Guillermo Oppenheimer her husband, Josefa Véve y Diaz, Prisco Vizcarrondo her husband, Clotilde Véve y Diaz, widow, and José Sastraño Belaval and Miguel Porrata Doria individually, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, this 8 day of March 1910.

[Seal United States District Court for the District of Porto Rico.]

B. S. RODEY,
District Judge.

Attest:

JOHN L. GAY,
Clerk of U. S. Court for Porto Rico.

CHARTS

TOO

LARGE

FOR

FILMING

Service of the within citation and receipt of a copy thereof admitted this 8" day of March 1910.

HENRY F. HORD,
Attorney for Defendants in Error.

459 [Endorsed:] No. 480. Law. In the District Court of the United States for Porto Rico. José Avalo Sanchez vs. Concepción Veve et al. Citation. Filed Clerk's Office, United States District Court, March 8, 1910. John L. Gay, Clerk of the Court, By C. A. Davidson, Deputy.

(Here follows map marked p. 460.)

Endorsed on cover: File No. 22,131. Porto Rico D. C. U. S. Term No. 523. Concepcion Veve y Diaz, Jose Sastrano Belaval, her husband, et al., plaintiffs in error, vs. Jose Avalo Sanchez. Filed April 29th, 1910. File No. 22,131.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 264.

CONCEPCIÓN VEVE Y DIAZ, JOSÉ SASTRAÑO BELAVAL, Her Husband, et al., Plaintiffs in Error.

vs.

JOSÉ AVALO SANCHEZ, Defendant in Error.

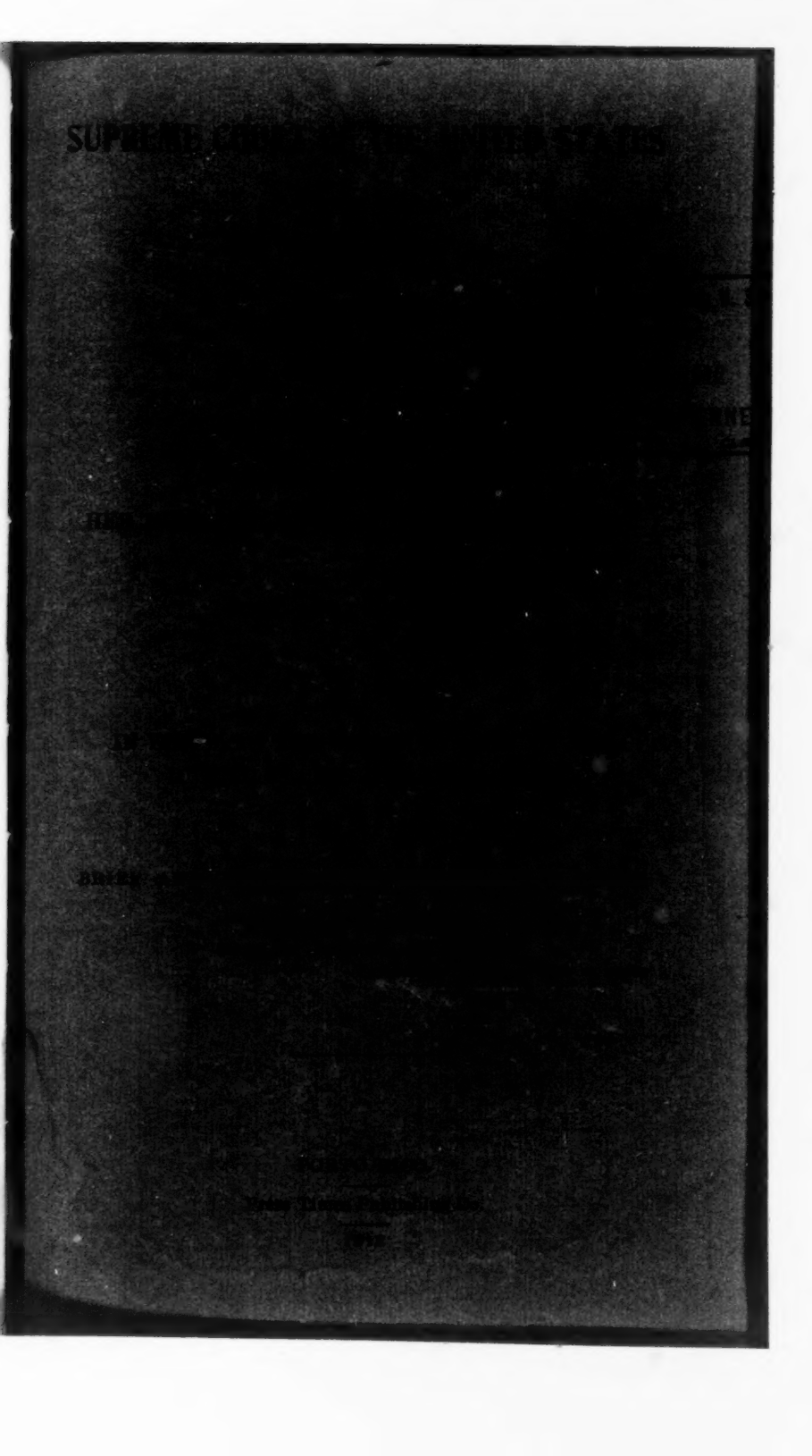
Stipulation.

It is hereby stipulated, consented and agreed by and between the attorneys for the plaintiffs in error and the attorneys for the defendant in error herein, that the transcript of the record herein be amended and corrected by adding thereto the date of Exhibit A which was inadvertently omitted, which said exhibit is referred to at folios 94, 95, 96, and 97 of the said transcript, and which said date is June 15, 1885; and that this stipulation be printed and added to the transcript of the record herein so as to form a part thereof.

San Juan, Porto Rico, April 9, 1912.

CHARLES HARTZELL,
MANUEL RODRIGUEZ SERRA,
Attorneys for the Plaintiffs in Error.
JOS. A. SAVAGE,
H. H. SCOVILLE,
Attorneys for the Defendant in Error.

[Endorsed:] File No. 22,131. Supreme Court U. S. October Term, 1911. Term No. 264. Concepcion Veve y Diaz et al., Pl'ffs in Error, vs. Jose Avalo Sanchez. Stipulation to correct transcript of record. Filed April 16, 1912.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1911.

No. 264.

CONCEPCION VEVE Y DIAZ.

JOSÉ SASTRAÑO BELAVAL,

HER HUSBAND, ET AL., PLAINTIFFS IN ERROR.

vs.

JOSÉ AVALO SÁNCHEZ,

DEFENDANT IN ERROR.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO

BRIEF AND ARGUMENT OF PLAINTIFFS IN ERROR.

CHARLES HARTZELL.
MANUEL RODRIGUEZ SERRA.
ATTORNEYS FOR PLAINTIFFS IN ERROR.

PORTO RICO.
Press Times Publishing Co.
1912.

STATEMENT OF FACTS.

Prior to the 28th. day of May, 1885, the defendant in error, José Acalo Sánchez, was the owner and in the possession of a certain tract or parcel of land situated in the barrio of Quebrada Fajardo, in the municipal district of Fajardo, in the Island of Porto Rico, and known as the Hacienda Bello Sitio, the same consisting of 400 cuerdas of land and being more particularly described as follows:

Being bounded on the North by the lands of Doña Isabel Siaca and the lands Hacienda Convento belonging to Doña Pilar Becerril y Torres; and on the east by the lands of Nicolás Telemaco of Don Benigno and of Sebastiana de Santiago; on the south by the property known as "Ausubal," lands of Concepción López, lands of the Successors of Albert Weston and by the carretera leading from Luquillo to Fajardo; and on the west by the lands of Enrique García, lands of Nicolás Pérez and lands of Gervasio Rivera. That the said tract of land came to the owner, the said defendant in error, by virtue or a judicial sale thereof under the authority of the Judge of the Court of First Instance in the District of Humacao, P. R., on the 5th. day of January 1880, a copy of the judicial deed therefore, being set forth in the transcript of the record (being folios 340 to 348).

That on the said 28th. day of May 1885, the said defendant in error being indebted to María Díaz y Siaca, widow of Veve, she being ancestor of, and party through whom the plaintiffs in error herein claim title to the said premises in the full sum of 5,600 pesos duly executed in favor of the widow of Veve a mortgage on the said Hacienda Bello Sitio as herein before described, together with its buildings, machinery, sheds, furnaces, sugar mill, and other structures, and certain personal property used in connection with the operation of the said Hacienda, to guarantee the payment to the said widow of Veve of the said sum of money so due on said mortgage, being set forth in the abstract of the record (from folio 349 to folio

357). The said mortgage was payable one half on the 18th of May 1886, and the other half on the 18th of May 1887.

That the said defendant in error having failed to pay the money secured by the said mortgage or any part thereof when the same became due, the said widow of Veve, the owner and holder of the said mortgage instituted her suit before the Court of First Instance in the District of Humacao, P. R., on the 11th day of February, 1889, for the execution and foreclosure of the said mortgage and the interest thereon, and on the 21st., day of February of the same year, the said Court of First Instance ordered the seizure and embargo of the said properties covered by the said mortgage, and on the 29th day of August 1891, the said property covered by the said Mortgage and which had been so embargoed, was in accordance with the orders of the Court, offered for sale at public auction and the same was sold and adjudicated to the said widow of Veve for the sum of 10,939 pesos and 34 centavos, and on the 30th day of October, 1891, the said widow of Veve as said purchaser of said property, was by the order of the said Court of First Instance, put into the actual possession of the property which had been so adjudicated to her as aforesaid, the said sale to her having been duly approved by the said Court. And that on the 18th, day of December, 1891, in pursuance of the said sale and adjudication of the said property, the Judge of the said Court of First Instance of Humacao, executed in pursuance to the law of Porto Rico, to the said widow of Veve, a deed for the said premises as described in the said mortgage, which said deed was duly inscribed in the Registry of Property of Humacao in Vol. 31, Archive 5, of Fajardo, by the Registrar of Property of Humacao of said district. The said deed of sale to the said widow of Veve of said property reciting the various transactions leading up to the same is set forth in the transcript of the record, (folio 359 to 388). That the said widow of Veve continued in the possession of the said premises for a short time, when certain persons claiming to be creditors of the said defendant in error, instituted proceedings in the Court of First Instance in San Juan in the nature of involuntary bankruptcy against the said defendant in error, and the said property Bello Sitio was

seized and taken possession of by a trustee in pursuance of said involuntary bankruptcy proceedings. (See transcript of record folio 389 to 392). That in the said involuntary bankruptcy proceedings, the said defendant in error claimed to be the owner of certain distinct tracts of land, but which it is claimed constituted a part and portion of the said Hacienda Bello Sitio, and when the depository named by the Court went to the premises to take possession thereof in accordance with the orders of the Court, he reported to the Court that there had been delivered to the said custodian or trustee, 400 cuerdas of land, and he further reported that the said 400 cuerdas of land were the only ones that were found at that place, and the same were formally delivered to, and put in the possession of the said trustee, this being the official return as set forth in folio 410 in the transcript of the record, and as confirmed by a decision of the District Court of San Juan, as set forth in Folio 449 of the transcript of the record. That the possession of the said property continued in the said depository of the said creditors until the 20th. day of May, 1901, on which date the creditor's proceedings having been abandoned, the heirs of the said widow of Veve, who had died in the meantime, and which heirs are the plaintiffs in error herein, secured an order from the District Court of San Juan for the return to them of the possession of the said Hacienda as the owners thereof, and such possession was accordingly delivered to them on said order. That thereafter certain other proceedings were had in connection with the possession of the said property as between the said bankruptcy proceeding and the plaintiffs in error herein, the said heirs continuing in possession of the said property as described in the said deed to the said widow of Veve, and said bankruptcy proceedings were terminated by a decision of the Supreme Court of Porto Rico dated the 21st., day of February 1907, by which decision of the Supreme Court it was decreed among other things, that the possession and occupation of the properties taken by virtue of said bankruptcy proceedings, should be vacated and concluded and that of the properties taken by virtue of the same, that all should be returned to the said defendant in error, with the exception of the said Hacienda Bello Sitio which was

ordered to be returned to the heirs of the said widow of Veve. ~~The judgment of the Supreme Court of Porto Rico aforesaid, and an attempt was made to have the the record~~. That thereafter certain proceedings were taken in the District Court of San Juan for the enforcement of the said decree of the Supreme Court of Porto Rico aforesaid, and an attempt was made to have the defendant in error put in possession of certain separate tracts of land, the same being the identical tracts pretended to be described in the complaint in this present action, but that upon the contention in the said District Court of San Juan, that the only property which the depositary of the bankrupcy proceedings had been able to discover, was the identical 400 cuerdas known as Bello Sitio and which had been so deeded to the said widow of Veve, the District Court of San Juan vacated the order which had theretofore been made, directing that the said defendant in error should be put into possession of any of the real estate held by the said depository in said bankruptcy proceedings, the language of the District Court as set forth at folio 448 & 449 of the transcript of record being as follows:

> "That the Chief Justice Quiñones in an opinion given in this case and accepted unanimously by the Supreme Court, states:
>
> "That the procedure followed in these proceedings are illegal, there is no doubt. It cannot be denied that these voluminous proceedings have nothing of bankruptcy, but the name, and they do not seem to have had any other purpose but that of interfering with the compliance of the sentence of public sale which took place in the executory proceedings instituted by Viuda de Veve against the Hacienda Bello Sitio, and the occupation of this Hacienda during the bankruptcy proceedings. Meanwhile after fifteen years have elapsed since Mr. Avalo Sánchez declared himself bankrupt, there is nothing to show who are his creditors nor if they have or have not been called together for a general meeting for the purpose of naming a manager, nor if a single step more has been taken in the proceedings, except the filing of executory proceedings by Viuda de Veve and the occupation of the Hacienda Bello Sitio.
>
> It seems from the general sense of the opinion, and especially from the paragraphs which we have transcribed, that the Supreme Court in decreeing its resolution of the 21st. of February, 1907, declaring illegal the proceedings, held precisely under the direction of the Judge who is sitting, arrived to the conclusion, that the only object of the bankrupt-

cy proceedings was to prevent the carrying into effect of the executory proceedings instituted against the bankrupt and the occupation, as was done, of the Hacienda Bello Sitio. But in spite of this, in the said resolution of the 21st of February 1907, the Supreme Court released the order of the occupation of the property, which remains at the free disposition of the bankrupt, with the exception of the Hacienda Bello Sitio.

And these orders which were derived from the documents existing on pages 226 and 227 of the second volume of the Records of Bankruptcy, were the ground upon which the Secretary of this court issued the order which we are asked to annul, but the truth is that the said document contained on pages 226 and 227, or the rogatory letter issued for the occupation of the properties of the bankrupt, wherein other parcels of land are described besides the Hacienda Bello Sitio, cannot be examined alone, for it is necessary to connect with those contained on pages 230 and 231 of the same second volume of the Administration of the bankrupt, or the records of occupation and delivery of the property, complying with said rogatory letter. By this last document it is evident that Bello Sitio composed of 400 cuerdas of land was taken possession of, together with a machine house, etc., which were the only properties found on the place.

And thus we have that in the first document there appeared described certain properties, which it seems, on the second document, were not found, and therefore could not be occupied, and such properties not having been found nor occupied at that time are the properties which the Secretary has ordered to be delivered, and which the Marshal had delivered to the bankrupt. Avalo Sánchez."

And the Court thereupon revokes the action of the Secretary of the District Court and holds that the same was issued without authority.

This order of the District Court of San Juan is the final disposition of the alleged bankruptcy proceedings wherein and whereby it was attempted to assert that the said Avalo Sánchez, defendant in error, herein, was the owner of several and distinct properties, the same being identical with those described in the complaint in this present action and for the possession of which this suit was brought.

In addition to the foregoing proceedings, the said defendant in error, shortly after the said Bello Sitio property had been sold and adjudicated to the said widow of Veve, instituted another action in the Court of First Instance in Humacao, P. R., against the said widow of Ve-

ve, seeking the cancellation of the said mortgage which he had so executed to the said widow of Veve, claiming that the same had been paid or satisfied by him, and such proceedings were had in connection with the said suit that the said Court of First Instance of Humacao on the 11th, day of August 1892, entered its judgment therein in favor of the said widow of Veve and against the contentions of the said defendant in error herein. It further appears that an appeal was taken by the said defendant in error from the said judgment of the Court of First Instance of Humacao, the records of said case being sent to the higher court or Audiencia Territorial, and the certificate of the Secretary of the said court is to the effect that the said appeal was granted on the 26th, of August 1892, where upon the records were sent to the said higher court, and that there is nothing on record showing that said appeal was carried through or sustained by appellant, nor that any further steps were taken in that behalf by anybody before the higher court. The said judgment of the Court of First Instance of Humacao, and the certificate of the said high Court being set forth at folio 432-444 of the transcript of record.

Thereafter and on the 7th, day of February 1908, the defendant in error filed in the District Court of the United States for Porto Rico, the amended complaint in this action. The same being an action to recover from the plaintiffs in error four tracts of land in all containing approximately 138 acres together with damages for the detention thereof, and the claim was made in and by the same that said plaintiffs in error and their ancestor, the widow of Veve, had, by means of fraudulent claims instituted in the courts of Porto Rico, usurped from the defendant in error, the possession of the said premises, and that by means of said false and fraudulent proceedings conducted in the Courts of Porto Rico, they had kept the defendant in error from the possession, use and enjoyment of the said property. The said complainant further alleging that the plaintiffs in error herein, continued the said false, fraudulent, judicial proceedings and the forcible possession of the said premises until on or about the year 1907, when the Supreme Court of Porto Rico decided that the said properties and improvements thereon belonged to the defendant in error, and should be returned

to him; but that the said order and judgment, although fixing the rights of the complaint was rendered in proceeding for certiorari, wherein the Court did not order the execution of the said judgment, and the defendant in error there upon prayed for the possession of the said premises and damages in the sum of $60,000.

To this complaint the plaintiffs in error answered denying the allegations of the said complainant and setting forth the proceedings herein before recited, wherein and whereby the said widow of Veve had acquired the title to the said premises, by virtue of the foreclosure of the mortgage which had been so executed to her by the said defendant in error, and likewise setting forth the proceedings in connection with the said alleged bankruptcy or insolvency of the defendant in error, and which terminated by the decision of the Supreme Court of Porto Rico herein before set forth, and which said judgment of the Supreme Court of Porto Rico had thereafter been further adjudicated by the decision of the District Court of San Juan, declaring that the identical tracts of land which the defendant in error is claiming in these proceedings had no existence, and that the entire amount of land which had been seized in the said bankruptcy proceedings constituted the Hacienda Bello Sitio, which was the property of the plaintiff in error and which had been expressly adjudicated to them by the said decision of the Supreme Court of Porto Rico.

Thereupon upon this case being reached for trial plaintiffs in error moved the court to dismiss the action summarily on the ground that the United States Court for Porto Rico was without jurisdiction to proceed with the trial of the case. This motion was based upon a resume of the proceedings which had theretofore been waged between the widow of Veve and the plaintiffs in error on the one side, and the defendant in error on the other, concerning the acquiring of, and status, of the title to the property in question, the said motion being set forth at Folios 77-78-79 of the transcript of record. Thereupon Counsel presented the plea of the statute of prescription under the laws of Porto Rico which was likewise over ruled by the Court.

The Court announced upon the trial of the case that the action should be treated as a simple action of eject-

ment, and likewise in the course of the trial announced that the sole question to be determined in the action was as to the identity of the lands described in plaintiff's complaint.

During the course of the trial and particularly in the testimony of the plaintiff's in error, Avalo Sánchez the defendant in error, testified that the property Bello Sitio was divided into two separate parcels and that the land for the possession of which he is now suing, completely bisected the said Hacienda Bello Sitio, (this testimony is set forth at folios 182, 183 and 184 of the record) and the said defendant in error attempted with a pencil to indicate on the plat which is attached to the Transcript of the Record at the conclusion thereof, the particular parcels of land which he was claiming by this action. (His testimony in this behalf is set forth at folio 262 263 of the record and on the plat the lines made by the defendant in error are indicated by blue lines shown on the plat. The survey made on behalf of the plaintiffs in error of the property in question, taking as the boundary lines the various properties named in the mortgage executed by the defendant in error to the widow of Veve, showed that after a careful and accurate measurement of the same as one entire tract, taking the boundaries as agreed upon with adjoining owners, contained approximately 400 acres. The official notes of the surveyor are set forth at folio 306 307 of the Transcript of Record and document signed by all of the adjoining owners agreeing upon the boundary lines, as followed by the surveyor is set forth at folio 401 402 of the record; and the plat as prepared and presented to the Court of the said survey is the plat attached at the conclusion of the Transcript of the Record, without the blue lines which were so inserted by the defendant in error.)

The plaintiffs in error also, to sustain their contention that the boundaries of the property had never been changed, and that the same had always consisted of a single tract or unit comprising 400 acres, introduced the evidence of practically of all of the adjoining land owners, many of whom had lived on their properties all of their lives and all of whom were well acquainted with the property known as Bello Sitio, and as against these there was offered the unsupported statement of the de-

fendant in error that the original boundaries of the property had been encroached upon by the adjoining owners, and that he had always been the owner of the tract of land dividing Bello Sitio into two separate parcels, bounding one of them on the east and the other on the west, and that the same had not been included in the terms of the said mortgage.

Motions were also made to take the case from the jury and dismiss at the conclusion of the plaintiffs testimony. The foregoing facts having then appeared in evidence, said motion having been likewise over ruled, at the conclusion of all the testimony, practically the same motion was renewed, and the same points were raised and over ruled upon motions in arrest of judgment and for a new trial.

Objection was also made on behalf of plaintiffs in error to the instructions of the court by which the jury were practically permitted to determine what lands were intended, by the defendant in error, to be included within the terms of the mortgage, of the widow of Veve, although it was contended by plaintiffs in error that there was no discrepancy or ambiguity whatsoever in the description of the property as contained in the said mortgage.

The jury thereupon found a verdict for the defendant in error upholding that he was entitled to the possession of the said premises, and for the sum of $4,205.10 as damages for the detention thereof, and judgment having been entered on said verdict, this writ of error is prosecuted for the reversal thereof.

ASSIGNMENTS OF ERROR AND POINTS RELIED UPON IN THE ARGUMENT.

First: The court erred in over ruling the motion for the dismissal of the said action presented at the opening of the trial thereof, and which is set forth at folio 77 to 80 of the Transcript of the Record. And the Court likewise erred in over ruling the motion presented by counsel for defendants at the conclusion of the testimony of plaintiff in the trial of said cause to take the case from the jury or to direct that the jury should return a verdict in favor of the defendants therein. Said motion being set forth at Folios 224 to 227 transcript of record.

Second: The Court erred in instructing the jury to the effect that they were entitled to consider and pass upon the identity of the property which was intended to be described in the mortgage executed by the defendant in error to the widow of Veve, and also for error of the court in those portions of the instructions duly excepted to and set forth in argument of error numbered 17, 19, 20, & 21, and as contained in folios 58 and 59 of the Transcript of the Record.

Third: For error of the court in over ruling plaintiffs in errors motion, to set aside the verdict of the jury in said cause, and to grant the plaintiffs in error a new trial therein. Said motion being set forth at folios 44 to 46 of the Transcript of the Record. Also for error of the court in over ruling plaintiffs in errors motion to set aside the verdict and enter judgment for the defendants on the pleadings and proof in said cause, said motion being set forth at folio 39 to 42 of the Transcript of Record.

Fourth: Error of the Court in refusing to sustain plaintiffs in error plea, as set forth in the various motions filed in said cause, that the said matters and things involved in this action were res judicata by reason of the various proceedings in the former Spanish and present Insular Courts of Porto Rico, wherein and whereby the identical matters and things litigated herein had been fully passed upon and determined by said Spanish and Insular Courts, certified copies of the said records and proceedings being introduced in evidence in this action in support of said plea.

Fifth: The Court erred in over ruling defendant's contention as set forth in the motion for non-suit and motion to dismiss, that the declarative suit which had been prosecuted by the same plaintiff against the same parties to set aside the original foreclosure involved in this action, was a full and complete determination of the matters involved in this action and a bar to this present suit.

Sixth: Error of the Court in determining that the final decision of the Supreme Court of Porto Rico of the so called certiorari proceedings was not a final determination of the identical matters involved in this present action, and likewise, error of the court in determining that the action of the Judge of the District Court of San

Juan was not a final determination of the identity of the premises belonging to the plaintiffs in error in this action, and in refusing to hold that the said order and judgment of the District Court of San Juan was not a final determination of the matters involved in this suit.

Seventh: Error of the Court in permitting evidence to be received by the jury and in permitting the jury to find by its verdict that the defendant in error was entitled to the possession to certain lands which were so situated as to divide the premises known as Bello Sitio, and which is the property of the plaintiffs in error, into two separate and distinct tracts of land, and introducing new boundary lines into the description of the said Bello Sitio and entirely at variance with the description as contained in the mortgage executed by the defendant in error.

Eigth: It appearing from the description of the premises Bello Sitio as contained in the mortgage executed by the defendant in error, and judicial deed transferring the same to the widow of Veve, that the same was plain and unambiguous, and described a single tract of land with boundaries and adjoining owners named therein and it appearing from the evidence that the identical boundaries still exist, and that plaintiffs in error are in possession of those lands described in the mortgage, the court erred in permitting the said cause to be submitted to the jury for any purpose whatever, and especially in permitting a verdict to be returned in said cause by the terms of which the single tract of land as described in such mortgage should be so divided as to create two separate and distinct portions, and under the ownership of persons not named as adjoining owners in the description contained in the mortgage.

Ninth: Error of the Court in refusing to set aside a verdict awarding to defendant in error the possession of certain lands which are not so described as to be possible of identification, and because of the imposibility of enforcing any judgment based upon the said verdict.

BRIEF AND ARGUMENT.

The statement of facts as presented in the foregoing analysis of the record would seem to indicate that the present cause presents complicated issues for theconsideration of the Court, and it is true that the various

matters and transactions which are contained in the record would indicate that a long and vexatious litigation has been waged with reference to the subject matter of this suit commencing in the year 1891 in the Spanish Courts of Porto Rico, and concluding in the Insular Supreme Court in Porto Rico sixteen years later, recommenced again in the present action one year thereafter by having same renewed in the United States District Court, and finally wending its way to this, the Court of Last Resort. Yet, nevertheless, we feel that the essential points of controversy may be concisely presented for the consideration of the Court and that several of the matters urged by the plaintiffs in error for the reversal of the action of the District Court of the United States for Porto Rico will be so elementary and conclusive as not to require extended argument.

POINTS OF ARGUMENT.

First: The error of the District Court of the United States for Porto Rico in over ruling the motion for the dismissal of the action presented at the opening of the trial and the same error in over ruling the motion presented at the conclusion of plaintiffs' testimony to direct a verdict of the jury in favor of the defendants therein. therein.

The cause under consideration presents some startling features. It seems almost incredible that the matter of litigation instituted in the Spanish Courts in 1891 by ordinary proceedings of a foreclosure mortgage, followed by the ordinary proceedings provided by the Spanish law to set aside and annual such foreclosure which litigation was likewise fully terminated by a decision of the Spanish Court of First Instance of Humacao, in Aug. 1892, again followed by the series of litigation detailed in the record herein, connected with the alleged insolvency or bankruptcy of the defendant in error but covering the identical matters in litigation herein, instituted in the Courts of Spain, and finally, determined by the Supreme Court of Porto Rico in February 1907, should be or could be allowed to re-appear by means of an action instituted in the United States Court for Porto Rico in 1908, and should finally wend its weary way to this Court of Last Resort.

The complaint of plaintiff herein as set forth at folios two to six of the Transcript of the Record, while somewhat resembling in form a complaint in an ordinary action of ejectment, nevertheless in alleging the wrongful actions of the defendants or plaintiffs in error leading up to the alleged liability upon which the suit is based, is compelled to disclose not the ordinary circumstances of an ejectment which leads up to the right of recovery of possession of real estate in usual circumstances, but states that the plaintiffs in error from 1891 to 1901 through their ancestor, the widow of Veve, and thereafter these present plaintiffs in error as a succession of the said widow of Veve, by means of false and fraudulent claims instituted in the Courts of Porto Rico, usurp from the plaintiff the possession of the said premises, and further alleging that by means of said false, fraudulent, and unfounded judicial proceedings conducted in the Courts of Porto Rico, they had kept the plaintiff from the possession, use and enjoyment of his properties, and further, that the plaintiffs in error continued the said false, fraudulent and wrongful judicial proceedings until the year 1907, when the Supreme Court of Porto Rico decided that the said properties and improvements belonged to the plaintiff, defendant in error herein, but that the said order and judgment was rendered in the proceedings certiorari wherein the Court did not order the execution of such judgment.

The motions referred to in the first assignment of error to be argued cover somewhat this phase of the controversy, and as a first point for the attention of the Court, we invite to its consideration the proposition as to whether or not, under the circumstances disclosed on the face of the complaint itself, the United States District Court of Porto Rico was under its jurisdiction as fixed by law, authorized to pass upon in any event, or to consider alleged wrongs which might have been inflicted upon the defendant in error by the administration of the Spanish Courts in Porto Rico from 1891 up to the entry of American administration in the Island in 1898, and thereafter for the period up to 1907 relative to legal proceedings waged in the duly constituted Insular Courts of Porto Rico, having full authority and jurisdiction for the consideration of such matters. And upon the face of the

complaint, it being alleged that the Supreme Court of Porto Rico in 1907 had determined the title of the defendant in error to the premises in controversy, but had failed to order the execution of its judgment, we submit that the controversy having been fully submitted according to the language of the complaint through the Spanish and the Insular Courts, whatever conclusion was finally arrived at in said Courts would be final and binding for all time, and must be enforced by the appropriate proceedings within the powers of the Court which finally adjudged the merits of the controversy.

The motion to dismiss the action which was presented at the commencement of the trial and is set forth at folios 77 to 78 of the Transcript, was based partly upon the foregoing consideration. That the Spanish Courts and the Insular Courts having that full jurisdiction and even in accordance with the allegations of the complaint disposed of the identical controversy herein presented. That the same should not be again considered in the form of an independent suit in the Federal Court, was in the nature of a collateral attack upon the judgments and decisions which had preceeded it, and therefore could not be maintained. The plaintiffs in error likewise in said motion urged upon the attention of the Court the plea of prescription or limitation which under the laws in force in Porto Rico had long since barred any action based upon the facts alleged in the complaint herein. We invite the attention of the Court to the statutes of limitation of prescription to which we refer as follows:

Section 1957 of the Civil Code in force up to April 7, 1899:

> "Ownership and other property rights in real property shall prescribe by possession for ten years as to persons present, and for twenty years with regard to those absent, with good faith and with a proper title."

Paragraph 1 of Military Order, dated April 7, 1899, having force of law:

> 1.—Art. 1957 of the Civil Code is amended to read as follows: "Ownership and other property rights in real property shall prescribe by possession for six years, as to persons present and absent, with good faith and with a proper title."

The second branch of the first point presented for ar-

gument is, as to the refusal of the Court to grant the motion presented by the plaintiffs in error at the conclusion of the plaintiff's testimony asking that the Court take the case from the jury or direct that a verdict be returned in favor of the defendant. This motion renewed the points presented by the motion to dismiss at the opening of the trial and at the time the same was presented, the evidence had already been introduced showing that the plaintiffs action was based upon transactions and matters which had been fully passed upon and adjudged by the Spanish and Insular Courts of Porto Rico, and upon the additional ground that under the testimony of the plaintiff it appeared affirmatively that the premises in controversy and which were in the possession of plaintiffs in error had been mortgaged and subsequently transferred as an entire tract within a given perimeter, whereas, the plaintiff being the mortgagor in the original transaction was seeking to recover as the owner of a tract or tracts of land which would have entirely segregated the body of land described in the mortgage and the deed to the widow of Veve, creating two separate and distinct parcels with boundaries and adjoining owners entirely different from those described in the mortgage and deeds covering the premises. The mortgage to the widow of Veve was introduced as an exhibit by the plaintiff, defendant in error, and is set forth at folios 350 to 357 of the Transcript. The description of the lands mortgaged as therein set forth, names the various adjoining owners on the North, East, South, and West of said premises, and this description as shown by the testimony was taken identical from the judicial deed under which the same premises had been in 1880 transferred to the defendant in error, (see transcript folio 342) and was the identical description as contained in the judicial deed executed to the widow of Veve in the foreclosure proceedings against the defendant in error, (see transcript folio 361) and the same was conceded by all parties and witnesses to constitute the boundary line for the single entire integral tract of land, having definite boundaries well defined, and that the same had been always known and constituted a single property having an approximate extension of 400 acres.

When therefore, during the course of the examination

of the defendant in error as a witness in his own behalf, it became apparent that he had instituted an action for the recovery from the plaintiffs in error of certain lands lying entirely within the perimeter of the boundaries outlined by the description contained in the mortgage, and the subsequent deed, and which alleged tracts of land would entirely divide the said premises into two separate and distinct parcels, the same constituting the boundary of one of the said parcels on the east, and of the other on the west, and which would introduce into the description of the said premises entirely new and different boundaries under different ownerships, it was contended at the conclusion of such testimony and at the conclusion of plaintiff's case, that the Court should have at once dismissed the action or have ordered a verdict for the defendants (plaintiffs in error herein.)

We invite the attention of the Court to the testimony of defendant in error in this record as set forth at folios 182, 183 & 184 of the Transcript.

> "Q.—Then do you mean to say that the land which you are now suing for is in the middle of what was formerly Bello Sitio?
>
> A.—Yes, sir.
>
> Q.—Well then, does the land that you are suing for go clear through it from north to south and absolutely separate it into two pieces or not?
>
> A.—Yes sir, divided it up.
>
> Q.—It completely bisected the land.
>
> A.—Yes sir.
>
> Q.—Just as much as a road?
>
> A.—Yes sir.
>
> .....
>
> Q.—These two pieces of land at the time you made the mortgage which you now say is Bello Sitio were separated by the so-called Sauri land that you are suing for here now?
>
> A.—Yes sir, the Sauri land.
>
> Q.—The Sauri land would then be the eastern boundary of the west part of Bello Sitio would it?
>
> A.—That is it.
>
> Q.—And the Sauri land would be the west boundary of the east piece of Bello Sitio?
>
> A.—Of the western part.
>
> Q.—It would be western boundary of the east part?
>
> A.—The western boundary is the east of Bello Sitio on one side."

This testimony is immediately followed by further statements of the defendant in error and he thereupon

attempted upon the plat presented by plaintiffs in error, a copy of which is attached to the Transcript of the Record, to mark with a blue pencil the outlines of the land which he was claiming and which clearly bore out his contention that he was seeking to separate the entire tract contained within the perimeter described in the mortgage, and to recover a strip of land segregating the same into two separate and distinct parcels.

The absolute impossibility or at least illegality of permitting a controversy to proceed wherein a mortgagor after default and foreclosure proceedings had deprived him of the premises as described in his mortgage, and which mortgage contained a simple unequivocal and unambiguous description, to wage a controversy with the purchaser at the foreclosure sale seeking to recover and claiming title to portions of the land admittedly within the boundary lines of the entire tract, as described within the mortgage, and especially where the same would entirely segregate premises creating two separate and distinct parcels, would seem so apparent as not to require extended argument.

The mortgage executed by the defendant in error to the widow of Veve was duly registered in the registry of property of Fajardo. If the same had consisted of two separate parcels as is now contended by the defendant in error in this present action, it should and must under the Regulations for the execution of the mortgage law of Porto Rico, by virtue of the provisions of Section 164 have been entered and registered as such separate and distinct parcels, and furthermore, by virtue of the same mortgage law, it is provided that where a mortgage is intended to cover several separate parcels of land, the amount of the mortgage shall be separated and subdivided, alloting separate portions to each of the several tracts so covered; the said section reading as follows:

Section 164 of the Regulations for the Execution of the Mortgage Law:

> "Registers shall not record any mortgage on various properties subject to the same obligations, unless by agreement between the parties, or by virtue of a judicial decree in a proper case, the amount is previously fixed for which each estate is to be liable.
>
> The parties may agree to the distribution mentioned in the preceding article, in the same instrument which should

be recorded, or in any other public instrument or petition directed to the Register, and signed and ratified before him, by the interested persons.

The record in these cases shall be made in the manner prescribed by article 252 of these regulations."

But neither of these things were done. The property was described as a single tract of land under a single description. It was registered as a single tract of land and the entire amount secured by the mortgage was used against the entire tract so described, and the proof overwhelmingly shows, and it is further more fully demonstrated by the surveyor's plat as introduced in evidence and contained in the transcript, that the adjoining boundaries and lands as contained in the said description of the mortgage are easily capable of identification, and constitute the same a single and compact body of land as has always been contended by plaintiffs in error and their ancestor the widow of Veve.

SECOND: That the Court erred in instructing the jury that they were entitled to pass upon or consider the question of the identity of the property which was intended to be described in the mortgage executed by the defendant in error and also in submitting for the determination of the jury in any event. The question of the identity of the land covered by the mortgage so far as the same might conflict with the description contained in the mortgage.

The language of the Court to which this exception was taken and which is set forth at folio 58 & 59 of the Transcript is as follows:

"You are further instructed that in determining this fact, you may look to the description the plaintiff put in his mortgage, and to all the documents or papers to which that mortgage referred that are in evidence before you, and consider all the surrounding facts as to the situation of the property and the parties at the time. If you find from a preponderance of the evidence that the plaintiff did not include the whole or any of the tracts of land he is now suing for, in his mortgage, and that the widow Veve knew that he did not so include the same, or ought to have known it, and that she in fact received in the mortgage all the land mentioned therein, then the plaintiff is entitled to recover that land or such portion thereof in this suit as you may believe from a preponderance of the evidence was not so included in plaintiff's mortgage, together with damages for the taking of any property therefrom, and

the rental value thereof to the date of your verdict."

And further:

> "You are instructed that the parties to a mortgage or conveyance are bound by the recitals thereof, the seller as much as the buyer, the mortgagor as much as the mortgagee, but if there is ambiguity in the description of the land as to what it includes or does not include, then you may resort to all the evidence in the case to determine what the parties understood or intended should be included in, or excluded from such conveyance or mortgage."

We shall not contend with the abstract principle of law as announced by the Court in the last portion of this charge to the effect that where there is ambiguity in a description, collateral evidence may be resorted to to explain or clarify such ambiguity. But in this case upon the evidence as it was produced without contradiction, we maintain that there was absolutely no question of doubt or ambiguity in the description of the land as contained in the mortgage, and it was gross error certainly, tending to confuse the jury, for the Court to authorize the jury to consider the cause as one containing an ambiguous decription or a description doubtful in any way. The only question which could legally have been passed upon by the Court in this action and the only inquiry as plaintiffs in error contended, which could legitimately be made under the contention of defendant in error, was as to whether or not the lands now in the possession of plaintiffs in error, comprised the body lying within the perimeter and boundary as set forth in the mortgage, and in the judicial deed awarding the premises to the widow of Veve. It was weakly asserted by the defendant in error in his testimony that adjoining owners must have encroached upon the outside boundaries of the original tract, and this contention was only made after it was made to appear by an accurate survey, that the lands now in possession of the plaintiffs in error comprised approximately only the 400 acres which had been originally mortgaged; but the contention of the plaintiffs in error has always been that there being no possible doubt or ambiguity in the description contained in the deeds to the property, there could be no consideration given by the jury to any determination as to what were intended to be covered by the recitals of the mortgage or the judicial deed; and the fact that the defendant in error pro-

duced several alleged transfers to him of titles to the various tracts upon which this suit is based, could not in any event give him the legal right to assert ownership to the same if it appeared from the evidence as it clearly did appear from his own evidence, that the land which he is seeking to recover in this action was clearly within the boundary of the tract described in the mortgage and judicial deed.

THIRD: The error of the Court in over ruling the motion for a new trial and in over ruling the motion to set aside the verdict and enter judgment for plaintiffs in error on the pleadings and proof in the cause.

These motions are set forth at folios 39 to 47 of the Transcript of Record, and practically comprise the statement of all of the various points of error for which we are here contending. And in discussing them we first desire to call the attention of the Court to the point which was urged throughout the trial of the cause in the court below, that this controversy had been entirely and completely litigated, ventilated and finally disposed of by the Spanish as well a sthe Insular Courts in Porto Rico: and that there could be no legal justification for permitting the same controversy involving the same questions to be raised in the United States Court. In support of this contention we invite the Court's attention to several of the exhibits introduced, part of them by the plaintiffs in error, and part by the defendant in error, and which disclose that at about the time that the foreclosure proceedings waged by the widow of Veve had been finally determined and the judicial deed awarding the premises to her had been executed, the defendant in error brought an independent action seeking to set aside the said foreclosure, and to cancel the mortgage which had therefore been foreclosed by the widow of Veve; and that after the trial of the said action, the Court of First Instance of Humacao, decided in favor of the widow of Veve and against the contentions of the defendant in error, then as appears at folio 444 of the Transcript, this decision was appealed from to the higher Court or Audiencia Territorial, and it is certified by the clerk of said court, that nothing could be found in the records showing that said appeal was carried through or sustained by appellant.

or that any further steps were taken in that behalf by anybody before the higher court.

While it may be argued that this record does not disclose that the defendant in error in said proceedings raised the identical question which is here presented as to the identity of the lands which were adjudicated and delivered to the widow of Veve under the foreclosure proceedings, still the principle is well established and too elementary to require citation of authorities, that in and by that litigation, the defendant in error was bound to bring forth and contend for whatever rights or relief he was entitled to in connection with the action of the Court under the foreclosure proceedings, and this decision having been rendered in 1892, the defendant in error in any event would be fully stopped from attempting to renew this contention sixteen years later by an independant action brought in the Federal Court of Porto Rico.

But in addition to this, we find from the record that at about the same time, certain persons claiming to be creditors of the defendant in error, instituted involuntary insolvency proceedings against him, and in attempting to take possession of the properties alleged to belong to the defendant in error, there was an attempt made to discover and levy upon the identical parcels of land which are admitted to be described in the plaintiff's complaint herein, and the return of the officer sent by the Court to take possession of the properties so described, contains the following language:

> "In the town of Fajardo, on the 25th day of May 1896, I a clerk of this Court, accompanied by the Judge, went to the Barrio Quebrada of Fajardo, place called Bello Sitio, with the purpose of putting in possession of the trustee, Don Gabriel Arruza y Echevarria, the property referred to in the preceding letter rogatory, and the said trustee being present, I proceeded to turn over to him the following properties cited in the letter above mentioned, to wit:
>
> 40⅞ cuerdas of land, the boundaries of which were more or less seen and approved by the trustee. A building where an incomplete machine was installed .....
>
> ....."
>
> which properties are the only ones that were found on that place and were formally delivered and put in possession of the said Mr. Arruza, etc."

It appears from the Transcript of these bankruptcy proceedings as set forth at folios 408 to 415 that various

proceedings were had in the Court in charge of the same, extending to the year 1907, then the matter was finally taken to the Supreme Court of Porto Rico by certiorari and on Feb. 21st., of that year the Court finally decided:

> "The Court being fully advised in the premises, and having carefully considered the allegations of the parties, is of the opinion, based on the above facts, that it should declare, and does hereby declare that the present application for a writ of certiorari should be granted, and therefore does hereby revoke the decision of the District Court of San Juan, dated March 30, of last year, and with reference to the petition of María Díaz widow of Veve dated May 4 1901, orders that inasmuch as the present bankruptcy proceedings have no further object, that all judicial intervention should cease leaving without effect the consolidation of the bankruptcy proceedings with the executory proceedings followed in the old Court of Humacao by the said widow of Veve against the bankrupt José Avalo Sánchez, or any other order issued in that connection, leaving matters as they stood when the consolidation of proceedings was ordered and returning the records to their original files for further action.
>
> The attachment levied on the property on account of the bankruptcy proceedings is hereby released and the same shall remain at the disposal of the bankrupt José Avalo Sánchez, provided there be no other legal impediment, with the exception of the plantation "Bello Sitio," which shall remain at the disposal of the heirs of Doña María Díaz widow of Veve, and returning the records of the bankruptcy proceedings to the District Court of San Juan for file in the office of the Secretary, without cost to either party. And it is so ordered.
>
> *José S. Quiñones.*
> *J. H. MacLeary.*
> *Adolph Wolf.*"

See Transcript of Folio 419.

This is the decision referred to by the defendant in error in his complaint in this action where he uses the following language:

> "Compelling the plaintiff during all of the said time to litigate his just rights in the premises until on or about the year 1907, the Supreme Court of Porto Rico decided that the said properties and the improvements thereon, belonged to the plaintiff herein, and should be returned to him, but that the said order and judgment although fixing the rights of the complainant herein was rendered in the proceeding for certiorari wherein the court did not order the execution of the said judgment."

It is true, that the Supreme Court in ordering the dismissal of the bankruptcy proceedings did order that the defendant should be allowed to resume the possession of any properties which had been taken from him, but it is equally true that the Court likewise decided that the plantation Bello Sitio should remain at the disposal of the heirs of the widow of Veve.

And while it may be technically asserted that the Supreme Court in this decision did not order the execution of the said judgment, nevertheless we find by the record that the defendant in error through the District Court of San Juan to which Court the records in the bankruptcy proceedings were ordered to be returned by the decision of the Supreme Court, did attempt to secure the adjudication to him under the said decision of the Supreme Court of the identical parcels of land which he is here suing to recover, and that the District Court of San Juan after a full consideration of the matter, and of the records in said proceeding determined that either the said several alleged parcels of land which are involved in this action, did not exist, or at least, were not contained within the boundaries of the property known as Bello Sitio, and therefore, Court refused to attempt to put the defendant in error into possession of the same. (This record is set forth at folio 445 to 450 of the Transcript of the Record). And it appears there from, that the defendant in error presented to the Secretary of the District Court on the 24th of June 1907, an application that he be put into possession of the properties described in this suit, and that the Secretary of the District Court issued an order authorizing such proceeding to be had, and that thereafter the plaintiffs in error being notified of such proceedings filed their petition to nullify and set aside the order thus issued by the Secretary of said Court, and thereupon the District Court decides as follows:

> "In our opinion this is the question which must be resolved.
>
> The Chief Justice Quiñones in an opinion given in this case and accepted unanimously by the Supreme Court states:
>
> 'That the procedure followed in these proceedings are illegal, there is no doubt.....it cannot be denied that these voluminous proceedings have nothing of bankruptcy, but the name, and they do not seem to have had any other purpose but that of interfering with the compliance of the sentence of public sale which took place in the executory pro-

ceedings instituted by Viuda de Veve against the Hacienda Bello Sitio, and the occupation of this Hacienda during the bankruptcy proceedings..... Meanwhile after fifteen years have elapsed since Mr. Avalo Sanchez declared himself bankrupt, there is nothing to show who are his creditors, nor if they have or have not been called together for a general meeting for the purpose of naming a manager, nor if a single step more has been taken in the proceedings, except the filing of executory proceedings by Viuda de Veve and the occupation of the Hacienda Bello Sitio.'

It seems from the general sense of the opinion, and especially from the paragraphs which we have transcribed, that the Supreme Court in decreeing its resolution of the 21st of February, 1907, declaring illegal the proceedings held precisely under the direction of the Judge who is sitting, arrived to the conclusion that the only object of the bankruptcy proceedings was to prevent the carrying into effect of the executory proceedings instituted against the bankrupt and the occupation, as was done, of the Hacienda Bello Sitio. But in spite of this, in the said resolution of the 21st of February, 1907, the Supreme Court releases the order of the occupation of the property, which remains at the free disposition of the bankrupt, with the exception of the Hacienda Bello Sitio.

And these orders were derived from the documents existing on pages 226 and 227 of the second volume of the Records of Bankruptcy, were the ground upon which the Secretary of this Court issued the order which we are asked to annul, but the truth is that the said document contained on pages 226 and 227, or the rogatory letter issued for the occupation of the properties of the bankrupt, wherein other parcels of land are described besides the Hacienda bello Sitio, cannot be examined alone, for it is necessary to connect it with those contained on pages 230 and 231 of the same second volume of the Administration of the bankrupt, or the records of occupation and delivery of the property, complying with said rogatory letter. By this last document it is evident that "Bello Sitio" composed of 400 cuerdas of land was taken possession o ftogether with a machine house, etc., etc., which were the only properties found on said place.

And thus we have that in the first document there appeared described certain properties, which it seems, on the second document, were not found, and therefore could not be occupied, and such properties not having been found nor occupied at that time are the properties which the Secretary has ordered to be delivered and which the Marshal had delivered to the bankrupt, Avalo Sanchez.

This being so, we believe that in no way at all is the order issued by the Secretary of this Court on the 26th of June, 1907, authorized by the order of the 31st of May, 1907, nor by the resolution of the Supreme Court of the 21st of February, 1907, and in virtue thereof, in this our

decree we declare that we must annul and do annul the said order issued in this matter by the said Secretary of this court on the 26th of June, 1907, and as a consequence thereof we also declare annulled all the acts carried out by the Marshal of the District Court of Humacao in complying with said order issued in good faith, but without authority whatsoever for it, everything remaining in the status quo, in which it was previous to the 26th of June, 1907, on which day the order was issued.

Dictated in my chambers this 10th day of July, 1907.

Emilio del Toro,
Substitute Judge."

We contend that this decision of the Supreme Court and the final determination thereon by the District Court of San Juan as thus announced, was a full, final, and complete determination of the rights of the defendant in error as well as of the plaintiffs in error, with reference to this entire controversy. And that the allegation of the complaint in this action to the effect that the Supreme Court of Porto Rico did not order the execution of its judgment is entirely nullified by the record showing that the defendant in error himself, did cause the judgment of the Supreme Court to be fully executed. That he did attempt thereunder to secure the possession of the identical properties for which he is here suing, and that the District Court of San Juan in pursuance of the decision of the Supreme Court aforesaid, finally and forever concluded any controversy which might be legally waged as to the right of the defendant in error to sue or claim title to any parcels of land comprised within the boundaries of Bello Sitio, as the same was conveyed to the widow of Veve, and practically determining that the alleged parcels of land for which the defendant in error is contending, had no legal existence because they described or attempted to describe, lands within the boundaries of said plantation Bello Sitio.

In addition to the foregoing and as comprised within the discussion which we are now presenting, objection was repeatedly urged during the course of the trial to the reception of any evidence tending to impeach the title of plaintiffs in error to the premises in controversy by the presentation of the record of a title subsequent in time to the execution and registration of the title of plaintiffs in error. The record shows that the mortgage to the wid-

ow of Veve from the defendant in error was inscribed in the Registry of Property in 1885, and that the judicial deed to the widow of Veve of the same premises on the foreclosure of the same was duly inscribed in the Registry of Property in 1891. Whereas, it appears that the only inscriptios relating to the different pieces of land now claimed by defendant in error appeared to have been registered for the first time in 1902, and the contention of plaintiffs in error has been, that no fact or circumstance connected with the alleged execution or registration of subsequent instrument could be received as evidence to impeach or destroy the earlier title which had been duly registered. Art. 389 of the Mortgage Law is as follows:

> "Art. 389. From this law goes into operation, no document or instrument which has not been recorded in the registry, shall be admitted in the ordinary special Courts or Tribunals, in the Councils or offices of the Government, by which interests subject to record are created, conveyed, acknowledged, modified, or extinguished, according to the same law, if the object of th presentation be to enforce, to the prejudice of third persons, the interests which should have been recorded."
>
> Article 23 of the Mortgage Law declares: "Instruments mentioned in articles 2 and 5 which are not duly recorded or entered in the Registry cannot prejudice third persons."

And the Article 2 referred to in the foregoing section contains the following paragraph:

> "Art. 2. In the Registries mentioned in the preceding article shall be recorded:
>
> 1. Instruments transferring or declaring ownership of realty or property rights thereto.
>
> 2. Instruments by which rights of use, use and occupancy, emphyteusis, mortgage, annuity, servitudes, and any others by which estates are created, acknowledged, modified or extinguished."

And Article 25 of the Mortgage Law provides:

> "Art. 25. Recorded instruments shall be effectual against third persons only from the day of record."

In the motion presented at the conclusion of plaintiffs evidence to direct a verdict in favor of the defendants, this point was fully discussed, and it appearing that the basis of the title of plaintiffs in error consisted of the duly registered mortgage and the duly registered judicial deed to the widow of Veve, that it was error for the Court to permit such title to be attacked on the strength of evidence of a deed or deeds, which were never presented for

registration until the year 1902.

The fourth error assigned for discussion relates to the error of the Court in refusing to sustain the plea of plaintiffs in error that this action was fully concluded by reason of the various proceedings in the former Spanish and present Insular Courts, and has therefore been covered by the foregoing discussion.

Fifth: The error of the Court in over ruling defendants contention as set forth in the motion for non suit and motion to dismiss. That the so called declarativo suit which had been prosecuted against the same plaintiff, the widow of Veve to set aside the original foreclosure was a full and complete determination of the matters involved in this action.

The matter has been incidentally referred to in one of the foregoing paragraphs of this argument, but we desire at this time more particularly to call the attention of the Court to the fact which fully appears by the transcript, that the defendant in error under the Spanish law was entitled to bring, and did bring, his action against the widow of Veve immediately following the foreclosure proceedings in and by which he attempted to set aside the same and to secure a cancellation of the mortgage of the Widow of Veve. This record is set forth fully at folios 432-444 of the Transcript of Record; and the contention of plaintiffs in error has been, that the same constituted the only action of which the defendant in error could avail himself to correct any error, either of fact or of procedure, in connection with the foreclosure proceedings under the provisions of the mortgage law and the regulations for the execution of the same in force in Porto Rico. In support of this contention we invite the court's attention to the following paragraph contained in Art. 175 of the Regulations for the Execution of the Mortgage Law.

After discussing the summary procedure for the execution of foreclosure of mortgages and the exceptional cases in which such procedure may be interpreted, the section proceeds:

> "All other actions that may be brought by the debtor as well as by the third parties in interest and other interested persons including those regarding the nullity of the title or of the proceedings, or regarding the lapse, consti-

tution, extinction, or amount of the debt, shall be discussed in the proper final trial, without ever causing a stay of the summary action for possession or avoiding them. The competency to take cognizance of this declaratory suit shall be determined by the usual rules."

It has always been conceded that this paragraph of the Regulations of the Mortgage Law provided the exclusive remedy by which a debtor or other interested party might secure relief from any error or insufficiency or other injustice which might have been connected with a foreclosure proceedings and it seems to be a procedure exclusive in its character; and in this case the defendants in error have elected to prosecute an action of this character, and the same having fully and finally determined by the Spanish Courts in 1892, that it should be held to be final and conclusive as against any right of the defendant in error to prosecute this present proceeding. Furthermore, in this action we invite the attention of the Court to the fact which appears in connection with the motion to dismiss the proceeding at Folio 77-78 of the Transcript of Record, that the defendant in error filed his bill in equity in this same United States Court for the District of Porto Rico, covering practically the same grounds as had been determined and passed upon in the declarative suit which was last discussed herein, and that the same Judge who permitted this present controversy to be submitted to a jury and sustained a verdict against the plaintiffs in error, in an opinion filed on Feb. 13th, 1909, and found at pages 448 to 453 of Vol. 4 of the Poro Rico Federal Reports, uses the following vigorous language concerning the methods of procedure of the defendant in error in connection with this same litigation:

"We have gone over the records so closely and examined the briefs of counsel to such an extent as that we feel we are now enabled to say from the record that there is in fact no equity in the bill at all. That its allegations show nothing on the part of complainant but an effort to excuse his own inexcusable laches, and to induce this court of concurrent jurisdiction, that has no appellate jurisdiction from the insular courts, to take hold of a case that has, in substance and in fact, been tried and settled finally in those courts, and in which the complainant was beaten at every turn after a full hearing. It would tire one to detail in a memorandum like this the different phases and issues of this litigation that were tried out even unto the supreme court of the island of Porto Rico many years before American oc-

cupation. The bill, as here filed, although the same was afterwards left out when the bill was amended, charged fraud and corruption against different judges, courts, and officials connected with the matter in the time of the Spanish régime, and even as finally amended, charges all sorts of deception, intrigue, and fraud against some of these respondents, and all of which they deny in their answers filed in support of their pleas.

"We do not think in the first place, that complainant has shown any diligence in and about his rights or the prosecution of his appeals; and, in the second place, we do not think it is the affair of this court, if in fact the legislature deprived him of any alleged right regarding his appeal. The expression used by Mr. Justice Brewer when delivering the opinion of the court in Cessna *v.* United States, 169 U. S. 186, 42 L. ed. 710, 18 Sup. Ct. Rep. 304, that 'it is the duty of a nation receiving a cession of territory to respect all rights of property as those rights were recognized by the nation making the cession, but it is no part of its duty to right the wrongs which the grantor nation may have theretofore committed upon every individual.' has some application by analogy here. While the treaty provides that property rights should be respected, and that all suits begun at the date of the treaty should be carried to a finality in the courts where they were or those that were substituted for them, still, when matters were settled by the Spanish courts during the Spanish régime in Porto Rico or since, we cannot see that this court, not having any appellate jurisdiction, has any right to interfere."

This vigorous language on the part of the trial court in connection, as we contend, with this same controversy between the same parties, is in such striking contrast with the attitude of the same judge in the case which we are now discussing, as to seem utterly incapable of being harmonized in any way. The argument which was used by the court in the foregoing quotation certainly should apply with equal strength to the contention now made wherein the same court permitted the disregarding not only of the action of the Insular Courts in the declarative suit referred to in the foregoing quotation, but also in the final decision in the Supreme Court of Porto Rico and the District Court of San Juan, which we have heretofore fully elaborated. And if the conclusion of the learned judge in the foregoing quotation that the United States Court of Porto Rico should not be considered as an appellate tribunal from the former Spanish and present Insular Courts, is a sound conclusion, it would seem that the same reasoning should with equal potency apply to

the disposition of the present controversy.

The sixth and seventh separate errors contained in the statement of errors herein, seem to be quite fully covered by the foregoing discussion and with reference to the eigth assignment, the same seems to be likewise involved in our discussion under the third paragraph hereof. And to the ninth assigment, we desire to call the attention of the Court to the unique fact that during the entire course of the trial there was no attempt made to identify the alleged boundaries of the tracts of land which the defendant in error is seeking to recover in this case, except the action of the defendant when a witness in his own behalf, in attempting to outline with blue pencil the said tracts of land as the same appears in the plat attached to the transcript of the record herein.

The decription contained in the alleged deeds which were presented by the defendant in error in support of his contention herein, are so utterly ambiguous, indefinite, and impossible of the identification that it would be wholly impossible to execute the judgment based upon the verdict of the jury in this case, even though it should be sustained by this Honorable Court; and is is submitted under the verdict as rendered without any attempted description of the tracts of land which are those awarded to the defendant in error, that no court, marshal or other official could possibly identify the boundaries of the alleged tracts of land or determine what their situation or location might be.

Quite a number of other assignments of error relating principally to the admission and rejection of testimony during the course of the trial are set forth in the assignments of error herein, but we are content to rest the determination of this controversy upon the discussion of the foregoing propositions, inasmuch as they seem to constitute the principal matters of controversy in which counsel for the plaintiffs in error feel that their legal rights have been invaded, and upon the same, the case is respectfully submitted with the prayer that the judgment of the District Court of the United States may be reversed, set aside, and held for naught.

Respectfully submitted,

Charles Hartzell.

Manuel Rodríguez Serra.

Attorneys for plaintiffs in error.

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Office Supreme Court, U. S.
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JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 264. 42.

Concepción Veve y Díaz, José Sastrafio Belaval, her husband, et al.,

PLAINTIFFS IN ERROR,

vs.

José Avalo Sánchez,

DEFENDANT IN ERROR.

In Error to the District Court of the United States for Porto Rico.

Brief for Defendant in Error.

HECTOR H SCOVILLE,
JOSE R. F. SAVAGE,

ATTORNEYS FOR DEFENDANT IN ERROR.

In the SUPREME COURT of the UNITED STATES.

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vs.

José Avalo Sánchez,
DEFENDANT IN ERROR.

No. 264.

IN ERROR
TO THE DISTRICT COURT
OF THE UNITED STATES
FOR PORTO RICO.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF FACTS.

The statement of facts contained in the brief filed herein by the plaintiffs in error is controverted by the defendant in error, for the reason that it consists of nothing but the statement of the defenses in this action, and is not set forth in such manner as to enable the Court to determine therefrom the real issues involved.

The following statement of facts is therefore submitted:

Prior to the 30th day of October, 1891, the defendant in error, José Avalo Sanchez, was the owner of, and in possession of four pieces or parcels of land specifically described in the amended complaint herein, (folios 2 and 3 of the record) and aggregating 138 acres more or less. On the said 30th day of October, 1891, Doña María Díaz Siaca, the ancestor of the plaintiffs in error, foreclosed a mortgage upon a certain tract of land of 400 acres, known as "Bello Sitio," lying upon either side of the pieces above referred to, and took possession not only of the 400 acres covered by the mortgage which she had foreclosed, but also of these four tracts of land, and she and her heirs, the present plaintiffs in error, have continued in the possession thereof, but without any right or title thereto, ever since. The defendant in error acquired the four par-

cels above referred to in the following manner: the tract of six cuerdas, more or less, by purchase from Manuel Flores in 1878, (folios 108, 109, 110, and 111 of the record); the parcel of 4½ cuerdas from Avelino Rexach, (folio 112); and the piece of 3 cuerdas from Josefa Quiñones, in 1880, (folios 113 and 114). The remaining tract of 124¾ cuerdas was purchased by the defendant in error from Avelino Sauri, by a private deed made by the said Sauri to the defendant in error on June 15, 1885, the Notarial deed to which was not executed until September, 1902, (folios 94 to 104 inclusive), of the record. None of these tracts ever formed a part of the plantation Bello Sitio, composed of 400 acres, which was mortgaged by the defendant in error to Doña María Diaz y Siaca, and which mortgage was executed on May 28, 1885. These four tracts together formed a single tract which completely divided the property known as "Bello Sitio' into two portions. (See testimony of the defendant in error, folios 182, 183 and 184 of the transcript, and the testimony of Domingo Iglesias, folios 320, 321, and 322.)

The contention of the plaintiffs in error is that these four tracts of land were never separate and independent of the property known as "Bello Sitio," and that they were covered by the mortgage, and passed, by the foreclosure, to their ancestor Doña María Diaz y Siaca.

BRIEF AND ARGUMENT.

The plaintiffs in error maintain that the judgment of the District Court of Porto Rico should be reversed on three grounds. First: That the points at issue herein are res judicata. Second: That the rights of the defendant in error have prescribed. Third: That it is impossible to identify the properties claimed by the defendant in error as separate and distinct from the property known as "Bello Sitio."

I.

NONE OF THE ISSUES RAISED IN THE CASE ARE RES JUDICATA.

The order of the District Court of San Juan entered on the 10th day of July, 1907, by Judge Toro, upon which the claim of res judicata is principally based, was an order entered in certain bankruptcy proceedings instituted by the creditors of the defendant in error, and in no manner whatsoever can be held to pass upon the title to the four tracts in controversy as between the parties to the present suit. All that this order determines is that in the bankruptcy proceedings there was not sufficient evidence, in the opinion of Judge Toro, to show that the four tracts of land in controversy were ever turned over to the trustee or "Depositario" in the bankruptcy proceedings, and that, in the absence of such evidence, the Depositario could not be ordered to return them to the defendant in error. The order does not pass upon the question as to whether or not the four tracts in question were part of, or included within the property known as "Bello Sitio," nor was the proceeding in which this order was entered one in which such a finding could have been made.

It is also argued by the plaintiffs in error that the decision of the Spanish Courts in the Declarative suit brought by the defendant in error against the widow Veve to cancel the mortgage upon "Bello Sitio" is a bar to the present action. The exhibit upon which this claim was based (folios 432 to 444 inclusive of the transcript) was offered by the plaintiffs in error but was not admitted in evidence, (folio 304). But, even assuming that this exhibit were before the Court, it would demonstrate conclusively that this declarative suit was begun prior to the date upon which the widow Veve took possession of the four tracts of land in controversy, and that the sole issue raised in that action was the right of Mrs. Veve to foreclose the mortgage on "Bello Sitio" because of the existence of a certain contract whereby the defendant in error claimed a release of the mortgage. The question as to whether or not the mortgage itself covered the lands which are the subject matter of the case at bar was in no manner involved in that declarative suit, nor did the question arise until after that suit had been instituted.

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It is insisted by the defendant in error that the lands which are the subject of the case at bar were never covered by the mortgage, and that when the widow Veve entered into possession of them she did so not by virtue of the foreclosure proceedings, but without any right or title whatsoever. The foreclosure proceedings whereby the title to the property known as "Bello Sitio" was conveyed to the widow Veve cannot be held to be a bar to the present action because the lands covered by that mortgage were well known to all of the parties, and it was never the intention of either the mortgagor or the mortgagee to include in the terms of the mortgage the land now in controversy. This question was one submitted to, and passed upon by, the jury.

The foreclosure proceedings could not relate to any land not included in the mortgage, and the evidence in the case at bar clearly shows that the lands in controversy were neither a part of "Bello Sitio" nor were they ever included or intended to be in the mortgage of "Bello Sitio," and that, as a matter of fact, the 124¾ cuerda tract of the 138 acres now sued for, was not acquired by the defendant in error until the mortgage on "Bello Sitio" was executed by him to Mrs. Veve.

The arguments used by the Judge of the District Court of the United States for Porto Rico in dismissing the bill in equity filed by this same defendant in error and relating to the property known as "Bello Sitio," in the opinion cited by the plaintiffs in error, pages 28 and 29 of their brief, are not applicable to the case at bar. There is no effort made in this case to secure the review of the proceedings of any court, either of Spain or of Porto Rico, with regard to the lands in controversy.

II.

THE RIGHTS OF THE DEFENDANT IN ERROR HAVE NOT PRESCRIBED.

The plaintiffs in error rely upon Section 1957 of the former Civil Code of Porto Rico, and upon paragraph 1 of the Military Order dated April 7, 1899, but the defendant in error contends that neither of these provisions are applicable to the present case. The

periods of prescription established by these two provisions of the law must be based on two essential elements:

(a) The good faith of the possessor, and
(b) A proper title in such possession.

The absence of both or either of these elements will take the case from under either of these provisions of law, and in order to support a title by prescription without good faith or a proper title, possession for thirty years is required, in accordance with provisions of Section 1959 of the old Civil Code of Porto Rico, which provides:

> "Ownership and other property rights in real property shall also prescribe by uninterrupted possession of the same for thirty years without the necessity of title nor good faith and without distinction between present and absent persons, with the exception mentioned in article 539."
> (War Department translation).

The exception covered by Article 539 of this Section, relates solely to certain kinds of easemnts to which title by prescription could not be acquired. Section 1959 above quoted has never been amended or modified by Military Order or otherwise, and is identical in all respects with the provisions of Section 1860 of the present Civil Code.

Defendant in error insists that Mrs. Veve did not acquire the possession of the lands involved in this action by virtue of a proper title, or by virtue of any title whatsoever.

The Civil Code of Porto Rico defines "proper title" as follows:

> "Art. 1952. By a proper title is understood that which legally suffices to transfer the ownership or property right, the prescription of which is in question."
> (Article 1952 of the old Civil Code, and Section 1853 of the present Civil Code.)

And Section 1854 of the present Civil Code provides as follows:

> "The title for prescription must be true and valid."
> (Sec. 1854 of present Civil Code; and Art. 1953 of the old Civil Code.)

Section 1855 of the present Civil Code provides as follows:

> "A proper title must be proven; it never can be presumed." (Sec. 1855 of the present Civil Code; and Art. 1954 of the old Civil Code.)

The mere fact that Mrs. Veve took possession of certain other property under the claim that that property was covered by a mortgage on "Bello Sitio" gave her no title to such property, for in fact it was not covered by the mortgage, nor included in the foreclosure proceedings. The defendant in error insists that the lands in controversy here were never included in that mortgage, or in those foreclosure proceedings.

Not only does the defendant in error claim that Mrs. Veve never acquired a proper title to the lands in controversy, but he also insists that she was never a possessor of the same in good faith. It is insisted that when she and her agents took possession of these lands, she and they knew that the same were separate and independent of "Bello Sitio," and that it had never been intended to include them in the mortgage. This is clearly demonstrated by the action of her agent Vaamonde in omitting from the measurement of the property "Bello Sitio" certain lands dividing the "Bello Sitio" into two separate tracts, as shown by the testimony of Domingo Iglesias, (folios 318 to 325 inclusive), and furthermore by the fact that the property known as "Bello Sitio" was in part composed of 124¾ cuerdas which was one-half of the tract purchased by Monserrate García and Avelino Sauri from Pedro Gotay and which is evidenced by the same deed under which the defendant in error deraigns his title to the major portion of the lands in controversy. This deed is Exhibit C for plaintiff below, and was introduced, and was referred to at folio 104 of the record.

The ancestor of the plaintiffs in error having entered into possession of those four tracts of land in 1891 without a proper title and in bad faith, and this action having been begun in 1908, it is self-evident that the rights of the defendant in error herein have by no means prescribed.

III.

The existence of the four tracts of land claimed by the defendant in error as separate and distinct from the property known as "Bello sitio" was demonstrated to the satisfaction of the jury, and their boundaries and location can be accurately determined from the evidence submitted in this case.

The description of the property in question by the defendant in error taken in connection with the plan presented as Exhibit A by the plaintiffs in error at the trial of this case could scarcely be made more clear and definite. The 124¾ acre tract is bounded on the east by the caño or channel de la Enea and the quebrada or creek Fajardo; on th south by the quebrada Fajardo and the lands of Laureano Sánchez; on the west by the caño Cayures and the lands of "Bello Sitio"; and on the north by the estate "Convento." The only boundary line between the estate "Bello Sitio" and the estate "Sauri" which the defendant in error is suing for that is not formed by a creek or inlet is the line to the west of the neighborhood road leading to the Aldea property which intersects the road leading from Fajardo to Luquillo west of the Fajardo creek. (See plat presented in record). The evidence shows that this particular piece of property between said neighborhood road and the boundary line just mentioned contains 26 acres; that its northern boundary is the said Fajardo-Luquillo road; its eastern boundary the road to the Aldea property, and its southern boundary the Fajardo creek; so that, if the monuments marking the western boundary to that plot have been destroyed by the plaintiffs in error, it is an easy matter to fix the line because of the three natural boundaries already given and the area of the property.

The boundary to the six-acre or "Flores" tract above mentioned is given in the deed of purchase, and is described in the complaint as being bounded on the north and south by the *hacienda* "Bello Sitio", on the east by the road leading to the *hacienda* "Convento," and on the west by the *caño de la Enea*. (See transcript of record, folios 201 to 203).

The boundaries of the other two properties as given in the complaint are such in relation to the outer boundaries of the property "Bello Sitio" and of the property sued for that there should be no difficulty in locating the same.

We contend that no error was committed by the trial court in submitting to the jury the question as to whether or not the lands sued for were included within the mortgage given by the defendant in error to the widow Veve. The fact that at the time this mortgage was given the tract of 124¾ cuerdas purchased by the defendant in error from Avelino Sauri was then the property of Sauri is uncontradicted. This tract of land, as above described, extends from the extreme northern to the extreme southern boundary of the perimeter inclosing the lands of "Bello Sitio", and is located immediately to the west of the three other tracts in controversy. This large tract of land, together with the three smaller tracts, divided, at that time, the estate "Bello Sitio" into two separate and distinct portions. It cannot be contended for a moment that were Sauri still the owner of that property the plaintiffs in error could have secured any right, title or interest in this tract of 124¾ cuerdas because of the description of the "Bello Sitio" as set forth in the mortgage. The only claim that the plaintiffs in error or their ancestor, the widow Veve, could have made to these four tracts of land at the time the mortgage was foreclosed, would have had to have been based upon the allegation that less than the four hundred cuerdas mortgaged were to be found within the boundaries given in the instrument. The mortgage does *not* describe four hundred cuerdas "*more or less*", but exactly four hundred cuerdas, and in this respect is similar to the Mexican land grants described in Doolan vs. Carr, 125 U. S. 632, from which decision we quote the following:

> "Those Mexican claims were often described, or attempted to be described, by specific boundaries. They were often claims for a definite quantity of land within much larger outboundaries, and they were frequently described by the name of a place or ranch. To the extent of the claim when the grant was for land with specific boundaries, or known by a particular name, and to the extent of the quantity claimed within outboundaries containing a greater area, they are excluded from the grant to the railroad company. Indeed this exclusion did not depend upon the validity of the claim asserted, or its final establishment, but upon the fact that there existed a claim of a right under a grant by the Mexican Government, which was yet undetermined, and to which therefore the phrase 'public

lands' could not attach, and which the statute did not include, although on each side of the road when located."

This description would well apply to many of the informal descriptions used in early conveyances or real property in Porto Rico. Nor can the plaintiffs in error contend that the survey submitted by them, and which appears attached at the end of the printed record, is an accurate representation of the boundaries of the "Bello Sitio" as given in the mortgage and at the time of the foreclosure of the mortgage. This survey, as it appears on its face, was made in the year 1909, more than seventeen years after the ancestor of the plaintiffs in error took possession of the property, nor are the names of the boundary-men in this survey the same as the names of those set forth in the mortgage.

The plaintiffs in error produced many witnesses to testify as to the location of the exterior boundaries of "Bello Sitio," but all of these witnesses were either too young to remember the actual conditions existing at the time of the foreclosure of the mortgage, or were ignorant of the conditions that then existed.

In view of all the facts and circumstances in the case, it is contended that no error was committed in submitting to the jury the question as to the identity of the lands in controversy with the lands covered by he mortgage, and that the rights of the plaintiffs in error were properly safe-guarded by the instructions given by the Court. (Folios 327 to 334 inclusive).

The action of the Court in submitting these questions to the jury was well within the rule laid down by this Court in the case of Reed vs. Proprietors of Locks etc., 8 Howard, 290, which says:

"The difficulty in the application of the descriptive portion of a deed to external objects, usually arises from what is called a latent ambiguity, which has its origin in parol testimony, and must necessarily be solved in the same way. It therefore becomes a question of the parties to the deed.

From this view of the case, as exhibited by the record, it clearly appears that the question, whether the demanded premises were included within the limits of the mortgage, or intended so to be, was submitted by the parties, and by the nature of the case, to the jury; and that, in order to a correct decision

of the issue, the jury should be instructed to weigh the testimony as to the 'monuments, length of lines, and quantities, actual occupation, etc.,' and decide according to the evidence and such is the meaning, and no more, of the language of the court now under consideration.

We can perceive no error in it."

As to the construction of contracts the same rule prevails in Porto Rico as in the United States and the intention of the parties is always an element. See secs. 1248, 1249 and 1250 Civil Code now in force which are identical with secs. 1281, 1282 and 1283 of old Civil Code in force in 1885.

IV.

In reply to that portion of the brief of the plaintiffs in error begininng at the bottom of page 25 thereof, that no evidence should have been received as to the title of the defendant in error to the various tracts now sued for because the same was not recorded until subsequent to the recording of the title to the property known as "Bello Sitio," the defendant in error insists that the provisions of the mortgage law relied upon to sustain this contention do not apply to the present case. The defendant in error is not attacking in this action the title of the plaintiffs in error to the property known as "Bello Sitio." This property consisted of 400 cuerdas; was registered as 400 cuerdas; was mortgaged as 400 cuerdas; and the mortgagee was put in possession of the 400 cuerdas which made up "Bello Sitio." Furthermore, these 400 cuerdas were found to exist independently of, and separated by, the tracts of land now sued for at the time the land was measured by the witness Domingo Iglesias.

Upon the foregoing propositions the case is respectfully submitted, with the prayer that the judgment of the District Court of the United States for Poro Rico be affirmed.

Respectfully submitted,

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Attorneys for Defendant in Error.

VEVE *v.* SANCHEZ.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

No. 42. Argued November 7, 1912.—Decided December 2, 1912.

While a tract may be so well known by name that it can be described and conveyed without other designation, ordinarily designation by name will yield to the more definite by metes and bounds; and in this case the latter rule should apply.

The construction of the description in a mortgage should not depend on the amount of land owned by the mortgagor but on the specific boundaries.

The general rule in determining what is included in a conveyance is that general calls for quantity must yield to the more certain and locative lines of the adjoining owners which are, or can be made, certain.

Nothing in this case warrants a departure from this long established and necessary rule of title.

In ejectment the plaintiff must recover on the strength of his own title and cannot prove by parol that a part of the land conveyed was not included in the grant; a contrary rule would make every grantee liable to have what had been conveyed to him taken away by word of mouth.

The rule prohibiting written contracts from being varied by parol is not confined to the common law, but was in force in Porto Rico in 1885 and since then.

The statement in a conveyance that the grantor is the owner of the property described estops the grantor from denying his right to convey, and if not the owner at the time his subsequent acquisition inures to the benefit of the vendee.

4 Porto Rico Fed. Rep. 329, reversed.

THE facts, which involve the rights of a mortgagee under a mortgage of land in Porto Rico, are stated in the opinion.

Mr. Charles Hartzell, with whom *Mr. Manuel Rodriguez-Serra* was on the brief, for plaintiffs in error.

Mr. Jose R. F. Savage, with whom *Mr. Hector H. Scoville* was on the brief, for defendant in error.

MR. JUSTICE LAMAR delivered the opinion of the court.

In 1885 Jose Avalo Sanchez mortgaged to Dona Maria Diaz y Siaca a sugar plantation in Porto Rico known as Bello Sitio, described as containing 400 cuerdas, and bounded on the north, south, east and west by the colindantes, or adjoining land owners, whose names were given. Suit to foreclose was instituted in 1889 and at the end of three years the mortgagee obtained a decree which, how-

ever, instead of ending the controversy, was the beginning of litigation in the Spanish courts which is said to have been the most protracted and bitter in the history of the Island of Porto Rico.

The record of the various proceedings is involved and complicated, but it appears that Mrs. Diaz purchased, at the foreclosure sale, and apparently in accordance with Spanish custom, (4 Wall. 261), was put in possession on October 30, 1891. But before she received the judicial deed, attachments were levied on Bello Sitio, on a lot afterward called Sauri, "in the center of the same" and on certain personalty, as the property of Sanchez. About the same time a concurso of creditors, in the nature of bankruptcy proceeding, was begun against him. The trustee apparently went through the form of taking possession of all property of Sanchez, including Bello Sitio, though without actually evicting Mrs. Diaz. Sanchez himself later instituted proceedings to cancel the mortgage and judicial deed under which Mrs. Diaz claimed title. He failed in this suit, but the other branches of the litigation continued for 16 years and, after the death of Mrs. Diaz, finally terminated in 1907, when the Supreme Court of the Island held that the attachment should be released, the bankruptcy proceedings dismissed, and all the property returned to Sanchez, except Bello Sitio, which was to remain at the disposal, of the heirs of Mrs. Diaz.

Both parties seem to have considered this a decision in their favor—the plaintiff claiming that it adjudged to him everything that was not Bello Sitio, and the defendants that it restored to them all that was included in the mortgage.

In the meantime Sanchez (in 1906) filed a bill in the United States court for Porto Rico, in which, as appears from statements in the opinion of the court, he attacked all of the proceedings in the Spanish tribunals as fraudulent, and asked that the mortgage foreclosure be set

aside and himself declared to be the owner of Bello Sitio. Whether any issue was therein presented, or legally involved, as to the boundaries of the land, cannot, in the absence of a copy of the pleadings, be determined. On demurrer this bill was dismissed for laches and want of equity.

Sanchez then brought the present suit for the recovery of 134 cuerdas of land, (lying within the exterior limits of Bello Sitio), and $60,000 as damages for improvements destroyed, crops removed, and mesne profits, from 1891 to 1907, during which time, he alleges, that the defendants and their ancestor, Mrs. Diaz, had usurped the premises, by means of false and fraudulent claims instituted in the Porto Rican courts. On demurrer the court held that the suit should be treated solely as an action in ejectment.

The defendants plead *res adjudicata*, title by prescription and title under the mortgage foreclosure. We need only consider the question presented by the claim in the answer "that the 400 cuerdas, known as the Hacienda Bello Sitio, includes the several parcels of land described in the plaintiff's complaint."

On the first hearing there was a mistrial. On the second, plaintiff offered evidence to show that between 1878 and 1880, he purchased three small lots forming a part of the tract mentioned in the complaint; that on January 5, 1880, he bought Bello Sitio from Monserrate Garcia, at the same time occupying, as lessee, the lot called Sauri. He admitted that "the land for which he is now suing was in the middle of what was formerly Bello Sitio," but claimed that Mrs. Diaz knew, or ought to have known, that the mortgage, dated May 28, 1885, did not convey Sauri, because he did not then own that place, and did not purchase it until June 15, 1885, three weeks later. There was evidence that, in 1892, during the bankruptcy, a survey was made with a view to marking the lines between Bello Sitio and the land now sued for; that the agent of

Mrs. Diaz was present and assented to the correctness of the survey. But if his admissions at that time could have bound the principal, or if he had authority to establish a new line by parol, the agreement was never executed by any change in possession, the complaint itself alleging that Mrs. Diaz and her heirs had been in possession since 1891. Plaintiff also relied on the records in the Spanish courts, which showed that from the time Mrs. Diaz took possession in 1891, he, his creditors and the trustee in bankruptcy, had persistently claimed that Sauri, and the other land now sued for, formed no part of Bello Sitio, and was not included in the mortgage. On the other hand, the defendants insisted that a single, not a divided tract, was conveyed by the mortgage, which, as translated, described the land as being "a sugar cane plantation known as Bello Sitio . . . composed of 400 cuerdas of land, equivalent to 157 hectares, 21 areas and 59 centiares with its buildings . . . and other appurtenances used in its cultivation. Said land being bounded on the north by the property of Isabel Siaca and by lands of the plantation 'Convento' belonging to Pilar Becerril y Torres; on the east by land of Nicolas Telemaco and by lands of Benigno and Sebastian de Santiago; on the south by the property called 'Ausubal' belonging to the Succession of Alejandrina Becerril y Torres, with lands belonging to Concepcion Lopez and by the property belonging to the Successors of Alberto Western and the Luquillo-Fajardo road; and on the west by lands belonging to Enrique Garcia and those of Nicolas Perez and of Gervasio Rivera."

A plat of Bello Sitio, made in 1907, showed that it contained exactly 415 cuerdas, and the defendants contended that if the 134 sued for were excluded, only 279 would be left, although the mortgage purported to convey 400 cuerdas. The plaintiff denied that the plat made in 1907 correctly represented the land which he had conveyed in 1885, insisting that, excluding Sauri, he bought 400 cuerdas

from Monserrate Garcia, and had conveyed that quantity to Mrs. Diaz. He claimed that if there was any present deficiency, it was due to encroachments by the adjoining land owners. He did not, however, establish what, if any, change had been made, while the surveyor testified that he followed the boundaries of Bello Sitio as indicated by ditches, fences, trees, stakes, and the documents of the adjoining land owners, all of whom were present when the survey was made and assented to its correctness. The land owners were also examined. Some of them had known the property from the date of the mortgage, and others, who were younger, for a shorter time. But all testified that they knew of no change in the lines.

The jury found a verdict for the plaintiff. A motion for a new trial was overruled. The case is here on assignments, which relate to rulings in admitting and excluding testimony, in charging and refusing to charge the jury, and in failing to direct a verdict for the defendants.

The plaintiff's testimony established that he was in possession of Bello Sitio as owner, and of Sauri as lessee when he made the mortgage on May 28, 1885. Three weeks later, he purchased Sauri and established a title on which he was entitled to recover, unless it, and the other three lots sued for, were included in the mortgage which described the property by name (Bello Sitio), by quantity (400 cuerdas) and by colindancias or adjoiners, on the north, east, south and west.

A tract may be so well known by name, that it can be described and conveyed without other designation. And there are cases where, in the sale of a ranch, or of an island, or of a well known plantation, the limits described by name have prevailed, when there was a discrepancy between it and other descriptive terms set out in the same deed. *Lodge* v. *Lee*, 6 Cranch, 237.

Ordinarily, however, designation by name will yield to the more definite description by metes and bounds. In

this case there was nothing to show that "Bello Sitio" was understood to mean or describe a Hacienda of clearly defined limits; and there was no basis for a charge as to the conditions on which such designation could prevail over the other calls in the mortgage. No instruction on that subject was given, but the court did charge the jury as to the effect of a description by quantity, telling them that they might consider the terms of the mortgage and all documents referred to in it, the condition of the property and circumstances surrounding the transaction, and if they found that, at the time the mortgage was signed, the plaintiff did not own 400 cuerdas, and afterwards acquired sufficient to make up what Mrs. Diaz believed and had reason to believe was included in the mortgage, then the law will hold that such land is included and they must find for the defendants so as to make up the full quantity of land. Conversely, they were instructed that "if when Sanchez made the mortgage he was in possession of a tract bought from Monserrate Garcia that contained 400 cuerdas, then they must find, under the language of the descriptive clause of the mortgage, that he did not convey to her any of the tracts he now sues for."

This makes the construction of the mortgage depend—not upon its language, but upon the quantity of land the mortgagor owned at the date of its execution, and required the jury to make designation by cuerdas prevail over description by specific boundaries. This is contrary to the rule that calls for quantity must yield to the more certain and locative lines of the adjoining owners. Such lines are certain, or they can be made certain, and may be platted so as to show the exact course and distance. They are treated as a sort of natural monument, and must prevail over the more general and less distinct designation by quantity. *Bartlett Land Co.* v. *Saunders*, 103 U. S. 316; *Whiting* v. *Dewey*, 15 Pick. 428, 434; *Cox* v. *McGowan*, 116

No. Car. 131, 135; *Reed* v. *Proprietors*, 8 How. 274, 289; *Leonard* v. *Forbing*, 109 Louisiana, 220.

2. It was argued that this rule was not applicable to Porto Rican deeds, made at a time when loose and indefinite methods of describing land were used. *Doolan* v. *Carr*, 125 U. S. 618, 632. But we find nothing in this case to warrant a departure from a rule long established and necessary to the protection of titles. The mortgage adopted a common method of bounding land. If there had been any error in describing what had been conveyed it became manifest when Mrs. Diaz took possession in 1891. If there was a mutual mistake, proceedings could have been brought to reform the mortgage and on such trial most of the evidence upon which plaintiff now relies might have been relevant. But in this action of ejectment he must recover on the strength of his own title and cannot prevail against those who hold under an instrument signed by him and which, in unambiguous terms, conveyed—not two separate tracts but a single body of land with definitely described continuous exterior boundaries. To permit a grantor, on the claim that an ambiguity existed, to prove by parol that a lot in the center of such a tract had not been conveyed would make every grantee liable to have what had been conveyed in writing taken away by word of mouth.

3. The rule prohibiting written contracts from being varied by parol is not confined to the common law, but was of force in Porto Rico when this mortgage was made, and its enforcement in construing the descriptive clause according to accepted rules governing boundaries preserves the rights of the parties here. Sanchez was in possession of Sauri, as lessee, when the mortgage was made. That possession was itself a *prima facie* indication of title. He conveyed 400 cuerdas bounded by the adjoining land lines. There is a claim, not established proof, that these lines had been changed. The slight excess of fifteen

cuerdas, shown by a later and accurate survey, is not inconsistent with defendants' right to 400 cuerdas, but confirmatory of their contention (Civil Code, Porto Rico 1471), while if plaintiff recovers the defendants will be left in possession of only 279 cuerdas, when the mortgage conveyed their ancestor 400.

4. Following the descriptive clause in the mortgage was a statement that Sanchez was the owner of the land. In addition to this recital, which, according to *Van Rensselaer* v. *Kearney*, 11 How. 297, 322–326, would be equivalent to a covenant of warranty and ownership, it was claimed that, under the laws of Porto Rico (Civil Code, 1474) a warranty was implied in all conveyances of real estate. Apparently, in accordance with this view, the judicial deed, made in pursuance of the foreclosure sale, contained a provision that "the debtor, Jose Avalo Sanchez, remains bound under the present sale to guarantee the title in accordance with law." These facts estopped Sanchez from denying that he had the right to dispose of all the property which the mortgage purported to convey. For, having received the money on the faith of the statement that he was the owner of the property, he was bound to repay that sum; or, failing that, to perfect the title on which the money had been advanced. So that when he acquired what is now called Sauri, but which had been originally included in the land conveyed by the mortgage, the title enured to the benefit of his vendee. *Amonett* v. *Amis*, 16 La. Ann. 225; *Lee* v. *Ferguson*, 5 La. Ann. 533; *Stokes* v. *Shackelford*, 12 La. Ann. 172; *New Orleans* v. *Riddle*, 113 Louisiana, 1051; *Partida* v. *Tv.*, L. 51; Ib. T. XIII, L. 50; *Van Rensselaer* v. *Kearney*, 11 How. 297, 322–326; *Bush* v. *Cooper's Admr.*, 18 How. 82, 85; *Moore* v. *Crawford*, 130 U. S. 122.

The judgment is reversed and the case remanded for further proceedings in conformity with this opinion.